TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 468.

RAFAEL MARIA DEL CASTILLO, PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO, JOHN H. LANG, HORACE C. REESE, AND WILLIAM H. FITZPATRICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 27, 1900.

(15,970.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 307.

RAFAEL MARIA DEL CASTILLO, PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO, JOHN H. LANG, HORACE C. REESE, AND WILLIAM H. FITZPATRICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Transcript from civil district court of the parish of Orleans	1	1
Petition	1	1
Answer of defendant	4	3
Judgment	5	4
Motion of appeal	6	4
Bond of appeal	6	5
Exceptions of defendant	8	5
Answer of W. H. Fitzpatrick and call in warranty	8	6
Answer of H. C. Reese and call in warranty	11	8
Exceptions of J. H. Lang	13	9
Exceptions of J. H. Lang	13	9
Answer of J. H. Lang	14	10
Answer of J. H. Lang to call in warranty by H. C. Reese	17	12
Note of evidence for plaintiff	20	14
Note of evidence for defendant and warrantors	22	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1896.

	Original.	Print.
Testimony of J. Z. Spearing	23	16
Act of sale, Flint to Castillo	24	17
Extract from advertisement	27	19
Act of sale, W. H. Fitzpatrick to W. L. McConnico	28	20
Act of sale, H. C. Reese to W. L. McConnico	31	22
Act of sale, Lang to Fitzpatrick and Reese	35	24
Act of sale from State of Louisiana to Orloff Lake	40	28
Act of sale from Orloff Lake to Thomas L. Lallance	44	31
Act of sale from Thomas L. Lallance to J. H. Lang	51	35
Advertisement (copy)	56	39
Exception of defendant overruled	58	40
Exception of Lang overruled	58	40
Petition in Lang *vs.* Kaufman	59	41
Answer of defendant Kaufman	60	42
Note of evidence in Lang *vs.* Kaufman	62	43
City tax certificate	64	44
State tax certificate	65	45
Judgment in Lang *vs.* Kaufman	67	47
Sale, R. M. Del Castillo to O. Lake	67	47
Act of sale, sundry tax debtors to State of Louisiana	72	50
Act of sale, sundry tax debtors to State of Louisiana	76	53
Act of sale, sundry tax debtors to State of Louisiana	81	57
Act of sale, sundry tax debtors to State of Louisiana	86	60
Delinquent tax-list	91	64
Copy of assessment-rolls	92	65
Instructions as to transcript of appeal	93	66
Clerk's certificate	95	67
Motion and order for extension of return day of appeal	96	67
Motion and order for further extension of return day of appeal	96	68
Rule to rescind order extending return day of appeal	97	69
Affidavit of G. W. Prados	99	70
Affidavit of R. H. Lea	100	71
Answer to rule	102	72
Affidavit of Fergus Kernan	103	73
Submission of rule to rescind, etc., to the court	105	74
Transcript of appeal filed	106	75
Opinion of the court on rule to rescind	106	75
Judgment of the court on rule to rescind	109	77
Order directing the filing of motion for certiorari	110	78
Motion and order for writ of certiorari	110	78
Agreement between counsel regarding assignment of case for trial	111	79
Return of clerk of the district court to writ of certiorari	112	79
Copy of certificate of redemption	113	80
Affidavit of J. Zach. Spearing	114	81
Case continued	116	82
Plea of *res adjudicata*	116	83
Case submitted	116	83
Opinion of the court	117	83
Final judgment	120	86
Petition for rehearing	120	86
Rehearing refused	123	88
Petition for writ of error and order thereon	123	88
Writ of error (copy)	124	89

	Original.	Print.
Bond for writ of error	126	90
Assignment of errors	128	91
Certificate of the clerk of the Supreme Court	131	93
Certificate of the presiding justice	131	93
Original petition for writ of error and order thereon	133	94
Original writ of error	135	95
Citation to McConnico	138	96
Citation to Lang	140	97
Citation to Reese	142	98
Citation to Fitzpatrick	144	99
Assignment of errors	146	100

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Petition. Filed March 12th, 1894.

Civil District Court for the Parish of Orleans.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. No. 42007. C'v'l Dist. Court, Division "E."

To the honorable the judges of the civil district court in and for the parish of Orleans:

The petition of Rafael Maria Del Castillo, a citizen of the Kingdom of Italy, residing at St. Remo, Italy, respectfully represents—

That he is the owner of certain property in the city of New Orleans, being—

"That square of ground, together with all the rights, privileges, customs, ways, servitudes, and whatever else may be thereunto belonging or in anywise appertaining, situated in Hurstville, parish of Jefferson, this State, bounded by Eleanor, Prytania, Pitt,
2 and Nashville streets, and designated by the number forty-eight (48) on a certain plan drawn by Benjamin Buisson, surveyor, dated the 17th day of March, 1837, and deposited for reference in the office of Wm. Boswell, late a notary in this city, said square measuring, according to said plan, three hundred (300) feet on Eleanor street and the same on Nashville street, and two hundred and forty (240) feet on Prytania street and the same on Pitt street;"

Which said property was acquired by petitioner from James Flint by act before Theodore Stark, notary public, on the 23rd of December, 1851.

Petitioner further represents that W. L. McConnico, a resident of this city and parish of Orleans, is now in the unlawful possession of said property, claiming to be the owner thereof by virtue of an act of sale from H. C. Reese, before J. Z. Spearing, notary public, of date the 2nd of March, 1893, recorded in conveyance office of this parish, in Book 147, folio 114, and by virtue of an act of sale from W. H. Fitzpatrick, before Omer Villere, notary public, of date March 9th, 1894, recorded in conveyance office, Book 151, folio 244.

That Willam H. Fitzpatrick and Horace C. Reese, both residents of this city and parish, claimed to be the owners thereof by virtue of an act of sale from one J. H. Lang, of date the 24th of February, 1892, before C. B. Upton, notary public; recorded in conveyance office of this parish, in Book 140, folio 512, and in mortgage office, Book 443, folio 596.

That the said John H. Lang claimed to be the owner of said property by virtue of an act of sale from Thomas L. Lallance to him passed on the 30th of January, 1891, before Jos. H. Spearing,

notary public; which said act is recorded in the conveyance office, in Book 136, folio 364, and in the mortgage office, in Book 419, folio 564.

That the said Thomas L. Lallance claimed to be the owner of said property by virtue of an act of sale from Orloff Lake to him passed on the first, 1st, day of December, 1885, before Jos. H. Spearing, notary public; which said act is recorded in the conveyance office, in Book 121, folio 990, and in the mortgage office, in Book 326, folio 180.

3 That the said Orloff Lake claimed to be the owner of said property by virtue of an act of sale from the State of Louisiana passed on the 4th day of November, 1885, before Jos. H. Spearing, notary public; which said act is recorded in the conveyance office, in Book 121, folio 899.

Now, your petitioner respectfully represents that he is the true and lawful owner of said property; that title thereto has never passed from him, and that he is entitled to the possession thereof.

That the said sales from H. C. Reese & W. H. Fitzpatrick to W. L. McConnico, from John H. Lang to W. H. Fitzpatrick and H. C. Reese, from Thos. L. Lallance to John H. Lang, and from State of Louisiana to Orloff Lake, hereinabove referred to, are absolutely null, void, and of no effect and operate as a cloud upon petitioner's title.

That in the sale from the State of Louisiana to O. Lake Joseph Desposito, deputy of James D. Houston, tax-collector, offered the said property for sale for the taxes for the years 1876, 1877, and 1878, and that for said years, though the property belonged to your petitioner, Rafael Maria Del Castillo, it was assessed as the property of R. Castillo and was advertised in the name of "Rafael Maria Del Castillo or *her* estate and heirs."

Petitioner further represents that said assessment, advertisement, and sale were absolutely null, void, and of no effect, and that the same has never divested petitioner of his ownership of the said property.

Petitioner alleges that said property is fully worth the sum of ten thousand dollars ($10,000), and that possession thereof is wrongfully and illegally detained from him by the said W. L. McConnico.

Wherefore, the premises considered, petitioner prays that the said W. L. McConnico be cited to appear and answer the demand in this petition contained, and, after due proceedings had, that there be judgment in favor of petitioner, decreeing the following acts to be absolutely null, void, and of no effect and ordering their cancellation:

1st. Acts of sale from H. C. Reese to W. L. McConnico, of
4 date March 2nd, 1893, recorded in C. O. Book 147, folio 114, & from W. H. Fitzpatrick to W. L. McConnico, of date March 9th, 1894, recorded in C. O. Book 157, folio 244.

2nd. Act of sale from J. H. Lang to W. H. Fitzpatrick and H. C. Reese, of date February 24, 1892, recorded in Conveyance Office Book 140, folio 512; Mortgage Office Book 443, folio 596.

3rd. The act from Thos. L. Lallance to John H. Lang, of date January 30th, 1891, recorded in Conveyance Office Book 419, folio 564.

4th. The act from Orloff Lake to Thos. L. Lallance, of date December 1st, 1885, recorded in Conveyance Office Book 121, folio 990; Mortgage Office Book 326, folio 180.

5th. The act from the State of Louisiana to Orloff Lake, of date November 4th, 1888, recorded in Conveyance Office Book 121, folio 899.

Further, petitioner prays that he may be decreed to be the true and lawful owner of said property, and that he be put in possession thereof.

Petitioner further prays for costs and for all such general and special relief as the nature of the case requires and law and equity grant.

(Signed) W. S. PARKERSON, *Att'y.*

3, 12, '94.

Answer of Defendant. Filed April 16th, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO } No. 42007. C'v'l Dist. Court, Division "E."

Now comes W. L. McConnico, made defendant herein, and, first reserving the benefit of all exceptions heretofore filed herein, for answer to plaintiff's petition denies all and singular the allegations therein contained except such as may be hereinafter specially admitted.

Further answering, defendant admits that he holds and is in possession of the property described by plaintiff as owner thereof;
5 that he purchased the undivided one-half thereof from Horace C. Reese, a resident of this city, per act before J. Z. Spearing, notary public, on March 2nd, 1893, for a consideration of two thousand three hundred dollars, and that he purchased the other undivided one-half thereof from Wm. H. Fitzpatrick, also a resident of this city, per act before Omer Villere, notary public, on March 9th, 1894, for a consideration of three thousand five hundred dollars, and that said Horace C. Reese and said Wm. H. Fitzpatrick are his warrantors. Defendant avers that his said two several purchases vest in him a good and absolute title to said property, and that said Reese and said Fitzpatrick should be called in warranty to defend the same. Defendant further specially pleads the prescription of two, three, and five years in bar of plaintiff's action.

Wherefore defendant prays that said Horace C. Reese and said Wm. H. Fitzpatrick be each cited to appear and answer this demand and call in warranty, and after due proceedings had that there be judgment herein in favor of the defendant and against said R. M. Del Castillo, plaintiff herein, dismissing this suit at his cost; but should the court decide that defendant's title to said property is

null, and in that event only, then defendant prays that he have judgment over against said Horace C. Reese for two thousand three hundred dollars, the amount paid by this defendant to said Reese for the undivided one-half of said property, and that this defendant also have judgment over against said Wm. H. Fitzpatrick for three thousand five hundred dollars, the amount paid to said Fitzpatrick for the other undivided one-half thereof, together with all costs, and for general and equitable relief.

(Signed) R. H. LEA, *Att'y.*

Judgment Appealed from. *Rendered February 11th, 1895.*

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. C'v'l Dist. Court, Division "E."

6

For the reasons this day orally assigned by the court, the law and the evidence being in favor of defendant—

It is ordered, adjudged, and decreed that there be judgment in favor of defendant, W. L. McConnico, and against plaintiff, Rafael Del Castillo, rejecting said plaintiff's demand at his cost.

Judgment rendered February 11th, 1895.

Judgment signed February 15th, 1895.

(Signed) GEO. H. THEARD, *Judge.*

Motion of Appeal.

Extract of minutes of February 28th, 1895.

Present: The Honorable Geo. H. Theard, judge.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. C'v'l Dist. Court, Division "E."

On motion of Kernan & Wall and John Watt, attorneys for plaintiff, and on suggesting to the court that the judgment rendered herein on the 11th day of February and signed on the 15th day of February contains error to plaintiff's prejudice, and that he is injured and aggrieved thereby—

It is ordered that a devolutive appeal be granted therefrom to the supreme court of the State upon plaintiff giving a good and solvent bond, conditioned according to law, for the full sum of one hundred & fifty dollars.

The said appeal to be returnable in said court Monday, March the 18th, 1895, there not being sufficient time to complete that transcript by next return day.

Bond of Appeal. Filed March 27th, 1895.

7 R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. C'v'l Dist. Court, Division "E."

Know all men by these presents that we, Rafael M. Del Castillo, as principal, and John Watt, as surety, are held and firmly bound unto A. V. Flotte, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the city of New Orleans, on the 15th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas the above-bounden Rafael M. Del Castillo has filed a motion of appeal from a final judgment rendered against him in the suit of Rafael M. Del Castillo *vs.* W. L. McConnico, J. H. Lang, & Horace C. Reese, called in warranty—

No. 42007 of the civil district court for the parish of Orleans, on the 11th day of February, 1895, and signed on the 15th day of February, 1895:

Now, the condition of the above obligation is such that the above-bound Rafael M. Del Castillo shall prosecute his said appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said John Watt, surety, shall be liable in his place.

(Signed) RAFAEL DEL CASTILLO,
Per JOHN WATT &
KERNAN & WALL, *Att'ys.* [SEAL.]
(Signed) JOHN WATT. [SEAL.]

Signed, sealed, and delivered in the presence of—
—— ——.

8 *Exceptions of Defendant. Filed M'ch 29th, 1894.*

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. Civil District Court, Division "E."

Now comes W. L. McConnico, made defendant herein, and excepts to plaintiff's petition upon the following grounds, to wit:

1st. That plaintiff's allegation that said property was sold by the State of Louisiana to Orloff Lake, one of defendant's authors, for the taxes for the years 1876, 1877, and 1878, and that the act executed in conformity with said sale, a duly certified copy whereof is hereto annexed as a part of this exception and marked "R" for reference,

was registered in the conveyance office of this parish, in Book 121, folio 899, shows that plaintiff is without any right of action herein; that said sale and the notarial act by plaintiff alleged, made in pursuance thereof, do, by the terms of the law, furnish full proof of the correctness of the proceedings complained of. and the law prohibiting plaintiff from contradicting same, his petition discloses *us* legal cause of action.

2nd. That plaintiff's right of action, if any be had, which is not admitted, but denied, is prescribed by the prescription of two, three, and five years, which are specially pleaded. Wherefore exceptor prays that these exceptions be maintained and this suit dismissed at plaintiff's cost.

R. H. LEA, *Att'y.*

Answer of W. H. Fitzpatrick & Call in Warranty. Filed Apr. 30, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. Civil District Court, Division "E."

Now comes William H. Fitzpatrick, called in warranty by W. L. McConnico, defendant herein, as his vendor of the undivided one-half of the square of ground herein in controversy, to defend this suit as warrantor of said W. H. McConnico to the extent of one undivided half thereof, and for answer to said call in warranty and the petition by plaintiff filed herein says that he denies all and singular the allegations in said call in warranty and in said petition contained, except in so far as may be hereinafter specially admitted. Further answering, defendant in warranty admits that he sold the undivided half of said square of ground to said W. L. McConnico, as stated in said call, and this respondent avers that his said sale and transfer vested in said W. L. McConnico an absolute and perfect title to said property and one which this court should sustain. This defendant in warranty further represents that he acquired title to the undivided half of said property by purchase from John H. Lang, a resident of Harrison county, Mississippi, per act before Charles B. Upton, Esq., notary public, on the 24th day of February, 1892, for a valuable consideration, to wit, the sum of $1,250, and that said John H. Lang is his warrantor; that at the time of his purchase from said Lang this defendant in warranty objected to the title tendered him by said Lang and refused to accept it, the same being founded upon a deed from the State of Louisiana in pursuance of a sale to one Orloff Lake for taxes due the State, under and by virtue of the provisions of act No. 82 of 1884, and that thereupon the said Lang filed a suit in this honorable court to compel this respondent and Kauffmann (his copurchaser) to accept said title and pay the price agreed upon for said property; that said suit, entitled and numbered John H. Lang *vs.* Kauffmann and Wm. H. Fitzpatrick, No. 34386, civil district court, was alloted to division A thereof, and was finally tried and decided

9

against this respondent and said Kauffmann, and judgment was rendered therein compelling this respondent and said Kauffmann to accept the title so tendered by said Lang; that, relying upon said judgment, this respondent and said Kauffmann (who had in the meantime sold his interest to Horace C. Reese) accepted said title and paid the price agreed upon. This respondent hence avers that it would be against good conscience and equity to annul the
10 title of said McConnico and compel this respondent to return to him the price thereof when this respondent was forced by a judgment of this court to accept said title and part with a large sum of money for the same.

This defendant in warranty therefore avers that the title to said property transmitted by him to said W. L. McConnico and acquired as aforesaid from said John H. Lang is good and valid, and that said John H. Lang should be called in warranty to defend the same. This defendant in warranty further specially pleads that plaintiff's action is prescribed by the prescription of two, three, and five years. Wherefore this defendant in warranty prays that John H. Lang be cited to appear and answer this demand and call in warranty, and after due proceedings had there be judgment herein in favor of W. L. McConnico and against R. M. Del Castillo, plaintiff herein, dismissing this suit at said plaintiff's cost and confirming and quieting said W. L. McConnico in this title to said property and possession of the same, and that there be further judgment herein in favor of this defendant in warranty and against said W. L. McConnico dismissing this demand and call in warranty at the cost of said R. M. Del Castillo.

But should the court decide that this defendant in warranty acquired no title to said property from said Lang and transmitted none to said McConnico, then and in that event only this defendant in warranty prays that he have judgment over against said John H. Lang for twelve hundred and fifty dollars, the amount which this respondent was compelled by judgment of this honorable court to pay said Lang for said property, and for all costs and for general and equitable relief.

R. H. LEA,
Att'y for W. H. Fitzpatrick.

Order.

Let this answer and call in warranty be filed and served as prayed for and according to law.

New Orleans, April 30, 1894.

GEO. H. THEARD, *Judge.*

11 Service accepted and citation waived, reserving the benefit of all exceptions.

New Orleans, Apr. 30, '94.

J. ZACH. SPEARING,
Att'y for J. H. Lang.

Answer of H. C. Reese & Call in Warranty. Filed April 30, 1894.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO, H. C. REESE, *et al.*, in Warranty.
No. 42007. Civil District Court, Division "E."

Now, by his undersigned attorneys, comes Horace C. Reese, called and cited in warranty in this above numbered and entitled cause, and, answering to the demand in warranty of the defendant in said suit and to the petition of plaintiff therein, denies all and singular the averments thereof, save and accept such as are hereinafter expressly admitted.

He admits the sale of the property described in plaintiff's petition by this respondent and William H. Fitzpatrick, as recited in the answer and demand in warranty of said defendant.

He avers and shows that on the 24th day of February, 1892, by authentic act passed at the city of New Orleans before Charles Bringay Upton, notary public, this respondent and William H. Fitzpatrick purchased, jointly and in proportion of one undivided half each, from John H. Lang, a resident of Harrison county, State of Mississippi, the immovable property in plaintiff's petition described for the price and sum of twenty-five hundred dollars, of which eight hundred and thirty-three $\frac{33}{100}$ dollars *was* paid by said vendees at the passing of said act and a like sum one year thereafter, and a like sum one year after that, with interest upon said two credit portions of the price at the rate of eight per centum per annum from the date of said act of sale.

12 This respondent further shows that he accepted said title and paid his proportion—that is, one-half of said price—in obedience to and under and by virtue of a final judgment of this honorable court rendered and signed in the suit of J. H. Lang, respondent's vendor, *vs.* M. Kauffmann and William H. Fitzpatrick, numbered 34386 of the docket of said court, respondent having been subjected to all the rights, defences, and protections flowing from said judgment by said Kauffman, one of the defendants therein. Certified copies of said act of sale and final judgment will be produced and filed in evidence upon the trial of this case. Respondent avers that by reason of said act and said final judgment he acquired a good and valid title to the one undivided half of said immovable property and conveyed to said W. L. McConnico a like good and valid title to the same, and the said John H. Lang should be called in warranty to defend the same.

The respondent expressly pleads the prescription of two years, three years, and five years in bar of plaintiff's suit. Wherefore respondent prays that a curator be appointed to represent said John H. Lang herein, and that through said curator the said John H. Lang be duly cited to appear and answer to this demand and call in warranty, and that after due proceedings there be judgment in favor of defendant rejecting the demand of the plaintiff; but should

there be judgment in favor of the plaintiff and against the defendant, and in favor of the defendant and against the respondent, then and in that event that there be judgment in favor of this respondent against John H. Lang for the sum of twelve hundred and fifty dollars, together with interest thereon at the rate of five per centum per annum on one-third of said sum from February 24, 1894, and at the rate of eight per centum per annum from the same date on the remainder of said sum paid by this respondent to said John H. Lang for the one undivided half of said immovable property as aforesaid.

And he prays for costs and for general and equitable relief.

CLEGG & THORPE,
Att'ys for H. C. Reese in Warranty.

13 Let J. Zach. Spearing, Esquire, be appointed *curator ad hoc* to represent John H. Lang, absentee, as prayed above, and citation and other process be served on said absentee through said curator, as provided by law.

Service accepted, reserving benefit of all exceptions.

New Orleans, Apr. 30, '94.

J. ZACH. SPEARING,
Att'y for J. H. Lang.

Exceptions of Lang. Filed May 10, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO } No. 42007. Civil District Court, Div. E, Docket 5.

Now into court comes John H. Lang, called in warranty in this suit, and excepts to the petition of plaintiff and to the answer and call in warranty of H. C. Reese on the grounds:

(1.) That the same discloses no legal or valid cause of action against this exceptor.

(2.) That the action of plaintiff, if any he has or had, is prescribed by the prescription of one, two, three, and five years. Wherefore exceptor prays that these exceptions be maintained and the suit of plaintiff and the call in warranty of H. C. Reese be dismissed at their cost; and exceptor further prays for all general relief.

J. ZACH. SPEARING, *Att'y.*

Exceptions of J. H. Lang, Called in Warranty. Filed May 11, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO } No. 42007. Civil District Court, Div. E, Docket 5.

Now into court comes John H. Lang, called in warranty in this suit, and excepts to the petition of plaintiff and to the an-
14 swer and call in warranty of W. H. Fitzpatrick on the grounds:

(1.) That the same discloses no legal or valid cause of action against this exceptor.

(2.) That the action of plaintiff, if any he has or had, is prescribed by the prescription of one, two, three, and five years. Wherefore exceptor prays that these exceptions be maintained and the suit of plaintiff and the call in warranty of W. H. Fitzpatrick be dismissed at their costs; and exceptor further prays for all general relief.

J. ZACH. SPEARING, *Att'y.*

Answer of J. H. Lang to Call in Warranty by W. H. Fitzpatrick. Filed June 13th, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. Civil District Court, Div. E, Docket 5.

Now into court comes John H. Lang, called in warranty in this suit by W. H. Fitzpatrick, and, reserving the benefit of the exceptions heretofore filed by him and again pleading and urging the same as though they were herein fully and specifically set out, for answer to the petition and to the answer and call in warranty of said Fitzpatrick denies all and singular the allegations thereof, except what may be hereinafter specially admitted, *all* calls *of* strict proof of the allegations of plaintiff's petition, and especially of the fact that plaintiff ever was the owner of the property described in this petition.

Further answering, respondent admits that he sold one undivided half of the property described in plaintiff's petition to said Fitzpatrick by act of sale passed before Chas. B. Upton, not. pub., in this parish, dated February 24th, 1892, duly registered in the conveyance office, in Book 140, folio 512; but respondent avers and alleges that the title conveyed by him by said act was a good, valid, and complete title and transferred the said one undivided half
15 interest in said property to said Fitzpatrick in full ownership; that said title was duly and legally declared good, full, and complete and the said Fitzpatrick was ordered to take and accept the same by a judgment of this honorable court in proceedings entitled J. H. Lang *vs.* M. Kauffmann, No. 34386 of the docket of this court, which said judgment has been complied with by the said Fitzpatrick and the same is now final and binding on all parties; that said judgment and the matters and issues decided thereby cannot and should not be now disturbed.

Further answering, respondent admits, avers, and alleges that the property described in plaintiff's petition was purchased by respondent from Thomas L. Lallance by an act of sale passed before Jos. H. Spearing, late not. pub., on Jan. 30th, 1891; that said Lallance acquired said property by purchase from Orloff Lake by an act passed before said J. H. Spearing, late notary public, on Dec. 1st, 1885, and that the said Lake acquired said property from the State of Louisiana through the State tax-collector by an act passed before said J. H. Spearing, late not. pub., on Nov. 4th, 1885.

Further answering, respondent alleges that said sale to said Lake was made by said tax-collector under the provisions of act No. 82 of the legislature of the year 1884 for unpaid taxes due by the plaintiff (if he was the owner of the said property) on said property to the State of Louisiana for the years prior to December 31st, 1879; that by said sale to him said Lake acquired a good, full, valid, complete, and irredeemable title to said property, which said title was warranted and guaranteed by the said State of Louisiana; that by successive, regular, and legal conveyances the said title so conveyed to said Lake was acquired by respondent, and in turn conveyed by him to the said Fitzpatrick.

Further answering, respondent alleges that said Lake also acquired the possession of said property from the said State of Louisiana; that upon his said purchase said Lake took possession of said property, and the said possession was and had been duly transferred to and acquired by and held by the respective purchasers of said
16 property from the said Lake and those holding under him and subsequent to him; that the defendant in this suit, to wit, W. L. McConnico, is now and has been since his purchases in rightful, legal, and lawful possession of said property, as the result and accompani-ent of said sales and transfers of said property from said Lake and his vendees, and the plaintiff has no right or claim to the possession or ownership of said property.

Further answering, respondent says that plaintiff is estopped from prosecuting this suit; that as between plaintiff, who claims to be the former owner of said property, and the purchaser at said tax sale and those holding subsequent to and under him the said tax sale is absolute and cannot be set aside under the allegations of plaintiff's petition; that plaintiff, claiming to be the former owner of said property and as such being responsible for the payment of the taxes for which said property was sold, cannot prosecute this suit to set aside a tax sale which never would have occurred if he had paid the said taxes. It would be against law and good conscience to permit plaintiff to profit by his own negligence, laches, and delinquencies.

Further answering, respondent alleges that the plaintiff has no title to said property and cannot recover in this suit for the further reason that said property was duly and legally adjudicated, sold, and transferred to the State of Louisiana for the unpaid taxes thereon due to said State for the years 1880, 1881, 1882, and 1883; that the said adjudications, sales, and transfers were all made after all the formalities of law had been complied with, and divested the plaintiff of all title to and interest in said property, if any he had at that time or ever did have; that subsequent to the sale to said Lake, hereinabove referred to, the said Lake and his vendees redeemed said property from the State and acquired all the interest of the State in and to said property, all in conformity with law and in pursuance to the condition of the said sale to said Lake under the terms of act 82 of 1884, if any title to or interest in said property remained in the State after the said sale to said Lake under the provisions of said act 82 of 1884.

Further answering, respondent specially pleads the pre-
17 scription of one, two, three, and five years in bar to the action of plaintiff.

The premises considered, respondent prays that after due proceedings there be judgment in his favor dismissing the action of plaintiff, and also dismissing the call in warranty of said Fitzpatrick against respondent, and respondent further prays for all costs and for general relief.

J. ZACH. SPEARING, *Att'y.*

Answer of J. H. Lang to Call in Warranty by H. C. Reese. Filed June 13th, 1894.

R. M. DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007. Civil District Court, Div. E, Docket 5.

Now into court comes John H. Lang, called in warranty in this suit by H. C. Reese, and, reserving the benefit of the exceptions heretofore filed by him, and again pleading and urging the same as though they were herein fully and specifically set out, for answer to the petition of the plaintiff and to the answer and call in warranty of the said Reese denies all and singular the allegations thereof, except what may be hereinafter specially admitted, and calls for strict proof of the allegations of plaintiff's petition, and especially of the fact that plaintiff ever was the owner of the property described in his petition.

Further answering, respondent admits that he sold one undivided half of the property described in plaintiff's petition to said Reese by act of sale passed before Chas. B. Upton, notary public, in this parish, dated February 24th, 1892, duly registered in conveyance office, in Book 140, folio 512; but respondent avers and alleges that the title conveyed by him by said act was a good, valid, and complete title and transferred the said undivided half interest in said property to said Reese in full ownership; that said title was duly and legally declared good, full, and complete, and the said Reese
18 was ordered to take and accept the same by a judgment of this honorable court in proceedings entitled J. H. Lang *vs.* M. Kauffmann, No. 34386 of the docket of this court, which said judgment has been complied with by the said Reese, and the same is now final and binding on all parties; that said judgment and the matters and issues decided thereby cannot and should not be now disturbed.

Further answering, respondent admits, avers, and alleges that the property described in plaintiff's petition was purchased by respondent from Thomas L. Lallance by an act of sale passed before Jos. H. Spearing, late not. pub., on January 30, 1891; that said Lallance acquired said property by purchase from Orloff Lake by an act passed before said J. H. Spearing, late not. pub., on Dec. 1st, 1885, and that the said Lake acquired said property from the State

of Louisiana, through the State tax-collector, by an act passed before said J. H. Spearing, late not. pub., on November 4th, 1885.

Further answering, respondent alleges that said sale to said Lake was made by said tax-collector under the provisions of act No. 82 of the legislature of the year 1884 for the unpaid taxes due by the plaintiff (if he was the owner of said property) on said property to the State of Louisiana for the years prior to Dec. 31st, 1879; that by said sale to him said Lake acquired a good, full, valid, complete, and irredeemable title to said property, which said title was warranted and guaranteed by the State of Louisiana; that by successive regular and legal conveyances the said title so conveyed to said Lake was acquired by respondent and in turn conveyed by him to the said Reese.

Further answering, respondent alleges that said Lake also acquired the possession of said property from the said State of Louisiana; that upon his said purchase said Lake took possession of said property, and the said possession was and has been fully transferred to and acquired by and held by the respective purchasers of said property from said Lake and those holding under him and subsequent to him; that the defendant in this suit, to wit, W. L. McConnico, is now and has been since his purchases in rightful,
19 legal, and lawful possession of said property as the result and accompani-ent of said sales and transfers of said property from said Lake and his vendees, and the plaintiff has no right or claim to the possession or ownership of said property.

Further answering, respondent says that plaintiff is estopped from prosecuting this suit; that as between plaintiff, who claims to be the former owner of said property, and the purchaser at said tax sale and those holding subsequent to and under him the said tax sale is absolute and cannot be set aside under the allegations of plaintiff's petition; that plaintiff, claiming to be the former owner of said property and as such being responsible for the payment of the taxes for which said property was sold, cannot prosecute this suit to set aside a tax sale which never would have occurred if he had paid the said taxes. It would be against law and good conscience to permit plaintiff to profit by his own negligence, laches, and delinquencies.

Further answering, respondent alleges that the plaintiff has no title to said property and cannot recover in this suit for the further reason that the said property was duly and legally adjudicated, sold, and transferred to the State of Louisiana for the unpaid taxes thereon due to the said State for the years 1880, 1881, 1882, & 1883; that the said adjudications, sales, and transfers were all made after all the formalities of law had been complied with, and divested the plaintiff of all title to or interest in said property, if any he had at that time or ever did have; that subsequent to the sale to said Lake, hereinabove referred to, the said Lake and his said vendees redeemed said property from the State and acquired all the interest of the State in and to said property, all in conformity with law and in pursuance to the conditions of the said sale to said Lake under the terms of act 82 of 1884, if any title to or interest in said property

remained in the State after the said sale to said Lake under the *under the* provisions of said act 82 of 1884.

Further answering, respondent specially pleads the prescription of one, two, three, and five years in bar to the action of plaintiff.

20 The premises considered, respondent prays that after due proceedings there be judgment in his favor, dismissing the action of plaintiff, and also dismissing the call in warranty of said Reese against respondent; and respondent further prays for all costs and for general relief.

(Signed) J. ZACH. SPEARING.

Note of Evidence for Plaintiff. Filed Jan. 4, '95.

Civil District Court, Parish of Orleans, Division E.

RAFAEL MARIA DEL CASTILLO *vs.* W. L. MCCONNICO. } No. 42007.

Note of evidence for plaintiff in the above entitled and numbered cause, taken in open court this 14th day of December, A. D. 1894, before the Hon. George H. Theard, judge.

Present: W. S. Parkerson, Esq., for plaintiff; Messrs. R. H. Lea, J. Zach. Spearing, T. H. Thorpe, for defendant and warrantors.

Plaintiff's counsel offers, introduces, and asks to be filed in evidence a certified copy of an act of sale of date December 23, 1891, from James Flint, passed before Theodore Stark, notary, certified as a true copy by Henry Garland, Jr., marked A.

Also certified copy of the assessment-rolls for 1876, 1877, and 1878, together with a certified copy of an extract of the advertisement of the tax sale under which defendant claims to have purchased this property, marked "B" and "C."

To the copy of the assessment-rolls defendant and warrantors object, upon the ground that the certified copy of the assessment-roll should be from the recorded of mortgages, where the

21 official assessment-rolls are deposited, whereas the purported copy presented to the court is signed and certified to by B. T. Walshe, State tax-collector.

Defendant and warrantors further object to the offer upon the grounds that this sale for taxes, having been made under and by virtue of the provisions of act 82 of 1884, is inadmissible and irrelevant and is excluded as matter of evidence by the terms of said act.

To the second offer of the certified copy of the advertisement defendant and warrantors object under the grounds that the advertisement itself is the best evidence of what that advertisement contains, there being no evidence before the court to show that that advertisement is not in existence; that the same is irrelevant and immaterial; and upon the further ground that the copy presented is not a copy

of the full advertisement, but is merely a copy of the description of the property advertised and contains no reference of the heading and ending of the advertisement, which are material parts of the advertisement.

By the COURT: The copy of the assessment-roll offered in evidence is admitted, subject to the second ground of objection urged, upon which the court reserves its ruling.

As to the copy of advertisement offered in evidence, the court sustains the objection that the original and not a copy should be offered.

The other objections to the introduction of the assessment-roll are overruled.

To which ruling of the court counsel for defendant and warrantors except and takes this note in lieu of a bill.

It is understood between the counsel for all parties that the original advertisement shall be offered in evidence, subject to the second objection.

Counsel for plaintiff offers, introduces, and asks to be filed in evidence certified copy of delinquent-tax list for the years 1872, 1876, and 1877 from the office of the recorder of mortgages.

Same objection. Same bill and note.

It is admitted by all parties that the value of the property
22 in controversy herein is in excess of six thousand dollars.

Plaintiff rests.

Note of Evidence for Defendant and Warrantors. Filed Jan. 4, '95.

Parish of Orleans, Div. E.

RAFAEL MARIA DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 42007.

Note of evidence in the above entitled and numbered cause, taken in open court this 14th December, A. D. 1894, before the Hon. George Theard, judge.

Present: W. S. Parkerson, Esq., for plaintiff; Messrs. R. H. Lea, T. H. Thorpe, and J. Z. Spearing, for defendant and warrantors respectively.

Filed Jan. 4, '95.

Counsel for defendant offers, introduces, and asks to be filed in evidence certified copy of an act of sale from William H. Fitzpatrick to W. L. McConnico, before Omer Villere, notary public, of date March 9th, 1894, marked "1."

Also certified copy of an act of sale before J. Z. Spearing, notary public, H. C. Reese to W. L. McConnico, of date March 2, 1893, marked "2."

Counsel for both warrantors W. H. Fitzpatrick and H. C. Reese offer, introduce, and ask to be filed in evidence duly certified copy

of act of sale before Chas. B. Upton, notary public, from John H. Lang to W. H. Fitzpatrick and H. C. Reese, marked "3;" also certificates of registration of said act.

Also record of suit in civil district court entitled John H. Lang *vs.* Maurice Kauffmann *et als.*, No. 34386, and particularly the judgment therein, in which offer defendant joins, as does warrantor J. H. Lang.

Counsel for J. H. Lang offers, introduces, and asks to be filed in evidence certified copy of an act of sale from the State of
23 Louisiana to Orloff Lake, passed before J. H. Spearing, notary public, November the 4th, 1885, together with the certificate of the registration of same in the conveyance office, in Book 121, folio 899.

Also offers, introduces, and asks to be filed in evidence certified copy of an act of sale from Orloff Lake to Thomas Lallance, passed before J. H. Spearing, notary public, dated Dec. 1st, 1885, together with the certificate of the registration of sale in the conveyance office, Book 121, folio 990.

Also certified copy of an act of sale from Thomas L. Lallance to J. H. Lang, passed before J. H. Spearing, notary public, January 30th, 1891, together with certificate of registration of same in conveyance office.

Also certificate of redemption from the State of Louisiana of said sales to said State for the said years 1881, 1882, and 1883.

Warrantors H. C. Reese and W. H. Fitzpatrick join in these last offers.

J. Z. SPEARING, Esq., sworn for defendant, says:

Direct examination by Judge LEA:

Q. Mr. Spearing, do you know anything of the sale of this property in question from the State of Louisiana to Orloff Lake?

A. Yes, sir.

Q. Do you know if Mr. Orloff Lake ever took possession of that property?

A. Yes, sir.

Q. Will you please tell the court what you know about that?

A. At the time of this purchase the firm of Joseph and J. Zach. Spearing, of which I was then a member, represented Mr. Lake as attorney. Shortly after the passage of the act of sale to him——

Q. When was that?

A. The act was passed in 1885. The act shows the date itself, and I don't remember exactly how long, but shortly after that act was passed my brother and I together went up to this particular square of ground—it was then a vacant square of ground—and we took possession of it as much as it was possible to take at that time.

We went on it and identified it as the square which had been
24 purchased by Mr. Lake, and subsequently the taxes for all the years from 1880 to 1885, inclusive, were paid, and the taxes from 1885 up to the time Lake sold it was paid, and were paid

by the subsequent owners, Lallance and Lang. We attended to the payment of those taxes for them.

Q. You placed the subsequent purchasers in possession?

A. When Lake sold to Lallance he gave Lallance the possession, of course.

Q. He relinquished possession to Lallance?

A. Yes, sir; he relinquished possession to Lallance, and when Lallance sold to Lang, Lallance gave possession to Lang.

Q. He went and took physical possession of the property?

A. Yes, sir.

Q. As far as physical possession could go?

A. As far as physical possession could go—yes, sir.

Q. That was during what year?

A. I am not certain about the year, but it was within a month or two after the passage of the act of sale.

Q. To Lallance?

A. To Lallance; yes, sir; in 1885. I have forgotten the month.

Q. You are certain it was not over a month or two afterwards?

A. Oh, I am certain it was not. I may state also that, acting on that possession, he offered it for sale frequently, and, as events show, Lallance bought it from Lake, and then Lallance sold to Lang.

Q. Did you have signs placed on the property?

A. I don't know whether a sign was ever placed on the property or not. We placed it in the hands of auctioneers and real-estate agents, and whether they put signs on it or not I am not sure.

No cross-examination.

Act of Sale—Flint to Castillo. Offered by Plaintiff. Filed Dec. 14, 1894.

23RD DECEMBER, 1851.

STATE OF LOUISIANA, }
25 *City of New Orleans.* }

Sale of property by James Flint to Rafael M. Castillo.

Be it known that this day, before me, Theodore Osborn Stark, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. James Flint, of this city, unmarried, who declared that, for the consideration and on the terms and conditions hereinafter expressed & in confirmation of the adjudication made on the 4th December inst. by Mes-rs. Beard and May, auctioneers of this parish, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over with all legal warranties unto Mr. Rafael Maria Del Castillo, of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and due possession thereof—

That square of ground, together with all the rights, privileges, customs, ways, servitudes, and whatsoever else may be thereunto

belonging or in anywise appertaining, situate in Hurstville, parish of Jefferson, in this State, bounded by Eleanor, Prytania, Pitt, & Nashville streets and designated by the number forty-eight on a certain plan drawn by Benj. Buisson, surveyor, dated the 17th day of March, 1837, and deposited for reference in the office of W. M. Boswell, late a notary of this city. Said square measures according to said plan three hundred feet on Eleanor street and the same on Nashville street and two hundred and forty feet on Prytania street and the same on Pitt street.

The aforesaid property herein conveyed was acquired by the said vendor, James Flint, (*sic*) 4, 5, retrocession from Herman Wiehe, by an act, (*sic*) 6, 7, passed on the nineteenth of October, 1846, before Helary Cenas, not. pub., and by reference to the certificate of the recorder of mortgages in and for the said parish of Jefferson, hereto annexed, it will appear that there is no mortgage standing in the name of the said vendor and recorded against the property
26 herein conveyed other than, 1st, one in favor of Ed. Gottschalk, to secure the payment of a note of $1,000; second, one in favor of the same, resulting from the inscription of a judgment rendered by 2nd district court of New Orleans, 7th *pene*, 1850, to sum $1,150, interest and costs; both of which mortgages have been cancelled, so far as they bear on said square, by act in my office; to have and to hold the said described property herein conveyed to the said purchaser, his heirs and assigns forever, and the said vendor, for himself and his heirs, the said described property to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever, and the said vendor do- hereby (moreover) transfer unto the said purchaser the rights and actions of warranty to which he is or may be entitled against any and all of the former owners of the property herein conveyed, hereby subrogating the said purchaser in and to the said rights and actions to be by him enjoined and exercised in the same manner as they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of four hundred and twenty dollars ($420), in part payment whereof the said purchaser has, in accordance with the terms of sale, paid the sum of one hundred and five dollars in ready current money, and for the remainder of said price has furnished his three several promissory notes, dated the 4th day of December inst., the day of said adjudication, and payable to his own order (and by him endorsed) respectively in one, two, and three years after date, for the sum of one hundred and five dollars each and bearing interest at the rate of six per cent. per annum from date to maturity, & thereafter, if not then paid, at the rate of eight per cent. per annum till final payment; which notes, after being paraphed by me, notary, in order to identify them with this act, *was* delivered to the said Flint, who hereby acknowledges the receipt thereof, as well as of the said ready money, and, in order to secure the full and punctual payment of said notes in principal and interest, the said purchaser hereby specially mortgages in favor of his said
27 vendor and of whosoever may become the holder of said

notes the hereby-conveyed square of ground, promissing and binding himself not to alienate nor encumber the same to the prejudice of this mortgage.

Thus done and passed in my office, at the said city of New Orleans, in the presence of George W. Christy and Edward Allen, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said notary, on this twenty-third day of December, in the year of our Lord one thousand eight hundred and fifty-one, seven words erased.

(Signed) GEO. W. CHRISTY.
JAMES FLINT.
E. ALLEN.
R. M. CASTILLO.
THEODORE STARK, *Not. Pub.*

I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify the above and foregoing to be a true and correct copy of the original.

(Signed) HENRY L. GARLAND, JR.,
Custodian of Notarial Records.

Extract from Advertisement—Flint to Castillo. Offered by Plaintiff. Filed Dec. 14, 1884.

NEW ORLEANS, *Feb.* 18*th*, 1884.

Extract from advertisement of tax sales dated June 30th, '85, sale commencing on 30th of July, '85, & made by J. D. Houston, late tax-collector under act 82, 1894.

340. A certain square of ground in the Sixth district of the city of New Orleans bounded by Prytania, Pitt, Eleanor streets, and Nashville avenue, designated as square No. 48, said square No. 48 measuring 240 feet front on each Pitt and Prytania St. by 300 feet front on each Eleanor street — Nashville Ave.; which property was assessed for the year- 1876, 1877, and 1878 in the name of Rafael Maria Del Castillo, of which property R. M. Del Castillo or
28 her estate and heirs are the present owners, and on which property the State taxes for the following years, viz., 1876, 1877, 1878, amounting to $38.50, are now due and unpaid, and also on which property the city tax for the years 1877, 1878, 1879, amounting to $45.00, are now due and unpaid. The above is a true copy of the advertisement of square No. 48, Hurstville, as per record of this office.

——— ———,
State Tax-collector.

Act of Sale—W. H. Fitzpatrick to W. L. McConnico. Offered by Defendant. Filed Dec. 14, 1894.

Sale of real estate by W. H. Fitzpatrick to W. L. McConnico.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this ninth day of the month of March, the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth, before me, Omer Villere, a notary public, duly commissioned and qualified in and for the parish of Orleans, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William H. Fitzpatrick, a resident of this parish and city, who declared that for the consideration hereinafter expressed he does by these present- sell, convey, & set over, with full warranty and with subrogation and substitution to all the rights of preceeding owners, unto Mr. Walter L. McConnico, also a resident of this parish and city, the said party being here present, accepting and purchasing for himself, his heirs and assigns, the following-described property:

One undivided half of square of ground in the Sixth district of this city, bounded by Prytania, Eleanor, Pitt, and Nashville Ave., measuring two hindred and forty feet on each Pitt and
29 Prytania streets, and three hundred feet on each Eleanor and Nashville avenue, being the same property acquired by the present vendor by purchase from J. H. Lang, per act passed before Chas. B. Upton, a notary public in this city, on the 24 day of February, 1892, C. O. Book 140, fo. 512.

And the said Lang had acquired the whole of said square by purchase from Thomas L[illegible], per an act before Joseph H. Spearing, a notary, in this city, on the 30th January, 1891, C. O. Book 136, fo. 364.

And the said Lallance had acquired same by purchase from Orloff Lake, per act passed before Joseph H. Spearing, notary, in this city, on 1st December, 1885, C. O. Book 121, fo. 990.

And the said Lake had acquired the same from R. M. Del Castillo at a tax sale thereof, per act before said Spearing, notary, on the 4th November, 1885, C. O. Book 121, fo. 899.

The said Del Castillo had acquired said property on 23 December, 1851.

By reference to the certificate of taxes hereto annexed it appears that all the taxes due on said property have been paid up to and including those of 1894.

By reference to the certificate of the register of conveyance, which is hereto annexed, it appears that the said property has not been alienated by the present vendor.

This sale is made and accepted for and in consideration of the

price and sum of three thousand five hundred dollars, $3,500, of which amount the aforesaid purchaser has paid cash, in current money of the United States, to the vendor, who by these presents acknowledges the receipt thereof and grants full discharge thereof the sum of —, and for the remaining part of said purchase price the said purchaser has furnished a certain promissory note for the sum of three thousand five hundred dollars, $3,500, drawn by him to his own order and by him endorsed, dated this day, and payable one year after date, and bearing interest at the rate of eight per cent. per annum from date till paid, which note, being first countersigned and paraphed *ne varietur* by me, the undersigned notary, in order to identify it herewith, was delivered to the said vendor, who acknowledges the delivery thereof.

And in order to secure the payment of said note and the interests thereon and all the costs, if any there be, and also the fees of the lawyer who may be employed in case of suit to recover the payment of said note (which fees are hereby fixed at five per cent. on the amount sued for), the property above sold and the other undivided square is and remains mortgaged and hypothecated, with vendor's privilege, in favor of any holder or holders of said note, hereby binding himself, the said purchaser, not to sell, alienate, or encumber said property to the prejudice of this mortgage.

It is furthermore agreed that should the said note be not punctually paid at maturity, then the holder or holders thereof shall have the right to cause the aforedescribed property to be seized and sold under executory process to the last and highest bidder and without appraisement. The purchaser hereby binds himself to cause the buildings erected on said property to be insured against the risks of fire and to transfer the policy of insurance to the vendor or to any holder or holders of said note, and in default whereof any holders of said note are authorized to insure said buildings at the proper costs and expenses of said purchaser. From the certificate of the recorder of mortgages in and for this parish, bearing date this day and hereto annexed, it appears that there is no other mortgage recorded against the above-described property than the one in favor of John H. Lang to secure the sum of $1,666.67, suit & costs, as per act before C. B. Upton, notary, dated the 24 February, 1892, now reduced to $833.33⅓.

And the said Fitzpatrick having produced the note of $33.33⅓ secured by the above-mentioned act, I, notary, cancelled the signature thereon and annexed it to this act. The recorder of mortgages is therefore requested and authorized to cancel from his records in Book 443, fo. 596, the inscription resulting from the act securing said note.

It is well understood and agreed, as above stated, that the whole of the aforesaid square, which now belongs to the present purchaser, is mortgaged to secure the payment of the herein-furnished note.

Thus done and passed at the city of New Orleans, in the presence of Messieurs W. N. Grunewald and Michael McQuade, competent

witnesses, who hereunto sign their names with said parties and me, notary, on the date first above written, after due reading.

(Signed) W. H. FITZPATRICK.
W. L. McCONNICO.
W. N. GRUNEWALD.
M. McQUADE.
OMER VILLERE, *Not. Pub.*

Registered in conveyance office, Book 151, fo. 244; recorded in mortgage office, Book 513, fo. 551.

A true copy.

OMER VILLERE, *Not. Pub.*

Act of Sale—H. C. Reese to W. L. McConnico. Offered by Defendant. Filed Dec. 14, 1894.

March 2nd, 1893—Sale—H. C. Reese to W. L. McConnico.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this second day of March, in the year of our Lord one thousand eight hundred and ninety-three and of the Independence of the United States the one hundred and seventeenth, before me, James Zacharie Spearing, notary public in and for the parish of Orleans, State of Louisiana, aforesaid, duly com-
32 missioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. John J. Gidierre, a resident of this city, herein acting as the agent and attorney-in-fact of Horace C. Reese, late a resident of this city, but now residing in the city of St. Louis, State of Missouri—said Gidierre being duly authorized, as per power of attorney made and signed by said Reese, dated at St. Louis, Missouri, on the 25 day of February, 1893, and signed and acknowledged before C. D. Greene, Jr., a commissioner for Louisiana at St. Louis, in the presence of two competent witnesses, which said power of attorney is hereto annexed as part hereof—and said Gidierre, in his said capacity, declared that for the price and on the terms hereinafter stipulated — does by these present sell, transfer, convey, assign, and deliver, with full warranty and guarantee against all claims whatsoever and with full substitution and subrogation in and to all the rights and actions in warranty of said Reese against all preceding vendors, unto Walter L. McConnico, a resident of this city, here present, accepting these presents, and purchasing for himself, his heirs and assigns forever, the following-described property, to wit:

The one undivided half interest and ownership of said Reese in and to the following-described real estate, to wit:

A certain square of ground in the Sixth district of this city, in square bounded by Prytania, Pitt, Eleanor streets and Nashville

avenue; said square measures two hundred and forty (240) feet front on each Pitt and Prytania streets by three hundred (300) feet front on each Eleanor street and Nashville avenue—

Being the same interest in the property which was acquired by said Reese and W. H. Fitzpatrick, in the proportion of one undivided half of each, from John H. Lang, as per act before Charles B. Upton, notary public, dated February 24, 1892, registered in con. office, B'k 140, fo. 512;

To have and hold said property unto said purchaser, his heirs and assigns forever. These presents are made and accepted
33 for and in consideration of the price and sum of eighteen hundred and fifty dollars, whereof said purchaser has paid the said Gidierre, in his said capacity, the sum of fourteen hundred dollars ($1,400) in cash, current money, which the said appearer hereby acknowledges to have received, for which he hereby grants full acquittance and discharge, and for the balance of said purchase price, to wit, the sum of four hundred and fifty dollars, said purchaser hereby assumes and promises to pay to the acquittance and discharge of said Reese one-half of a certain promissory note made and signed by said Reese and said W. H. Fitzpatrick to their own order and by them endorsed, dated February 24th, 1892, for the sum of eight hundred and thirty-three dollars & $\frac{33}{100}$, payable two years after its date, with eight per cent. interest per annum from its date till paid, the payment of which said note is secured by vendor's lien and privilege in favor of said J. H. Lang, as per act passed before said Upton, not. pub., dated Feb. 24th, 1892, recorded in mortgage office, B'k 443, fo. 596.

By reference to the annexed certificate of the register of conveyances for this parish it does not appear that said vendor has heretofore alienated said property.

By reference to the annexed certificate of the mortgages for this parish it will be seen that said property is free of all encumbrances in the name of said Reese & Fitzpatrick except 443–396, the mortgage they granted in favor, Feb. 29, '92, of their vendor, J. H. Lang, to secure the sum of $1,666.67, interest, etc., as per act before Chas. B. Upton, not. pub., dated Feb. 24, 1892, one-half of which said mortgage is hereinabove assumed; and here the said McConnico presented to me, notary, a certain promissory note, made and signed by said Reese & Fitzpatrick to their own order and by them endorsed, dated Feb. 24, 1892, for the sum of eight hundred and fifty-three & 33⅓–100 dollars, payable one year after its date, with eight per cent. interest per annum from its date till paid, the payment whereof is secured by vendor's lien in favor of John H. Lang, as per act before C. B. Upton, not. pub., dated Feb. 24, 1892, recorded in mortgage office, Book 443, fo. 596, which note said Mc-
34 Connico declared had been paid by him and said Fitzpatrick in equal proportions, the signatures on which said note I, notary, cancelled and erased.

The said McConnico, *is* the last holder and owner of said note hereby authorized, instructs the recorder of mortgages to cancel and erase said mortgage above referred to, to the extent of eight hun-

dred and thirty-three 33⅓–100 dollars and no further. Thus done and passed in my office, in the city of New Orleans aforesaid, on the day, month, and year first above written, in the presence of Messrs. Jno. C. Ricks and E. S. Reach, competent witnesses, residing in this parish, who hereunto sign their names with the said parties and me, notary, after due reading of the whole.

(Original signed) HORACE C. REESE,
Per pro. JOHN J. GIDIERE.
JOHN C. RICKS.
J. ZACH. SPEARING, *Not. Pub.*

EDW. S. REACH.
W. L. McCONNICO.

Registered in conveyance office, Book 147, folio 141.
New Orleans, March 3rd, 1893.
(Signed) H. CAIN, *Reg.*

Recorded in mortgage office, Book 466, fo. 616.
New Orleans, March 4th, 1893.
(Signed) J. P. RONDEAU, *Cl'k.*
(Signed) JOS. BATT, *R. M.*

A true copy.
New Orleans, March 9, '93.
J. ZACH. SPEARING, *Not. Pub.*

35 *Act of Sale.*

Lang to Fitzpatrick and Reese. Offered by warrantors, Fitzpatrick and Reese. Filed Dec. 14, 1894.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth, before me, Charles Bringay Upton, a notary public in and for the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared James Z. Spearing, a resident of this city, herein appeared as the agent and attorney-in-fact of J. H. Lang, a resident of Harrison county, State of Mississippi, as per power of attorney passed before Jos. H. Spearing, not. pub., in this city, on July 29, 1892, who declared that for the price and on the terms hereinafter stipulated he, in his said capacity, does by these presents sell, transfer, convey, assign, and deliver, with full warranty and guarantee against all claims whatsoever, and with full substitution and subrogation in and to all said Lang's rights and actions in warranty against all preceeding vendors, unto William H. Fitzpatrick and Horace C. Reese, both of age and of this city, in the proportion of one undi-

vided half to each, here present, accepting these presents, and purchasing for themselves, their heirs and assigns forever—

A certain square of ground in the 6th dist. of the city of New Orleans, bounded by Prytania, Pitt, and Eleanor streets and Nash-
ville avenue, designated as square No. 48. Said square
36 measures 240 feet front on each Pitt and Prytania Sts. by
300 feet front on each Eleanor street and Nashville Ave., being part of the same property acquired by said J. H. Lang from Thomas L. Lallance, as per act of sale passed before Jos. H. Spearing, not. pub., on July 30, 1891. Reg. Con. Of., B'k 136, fo. 364.

And the said purchasers declared that they accepted said property and the title thereof in obedience to a judgment of the civil district court for the parish of Orleans rendered on Feb. 4th, 1892, and signed Feb. 10th, 1892, in suit of said John H. Lang *vs.* M. Kauffmann *et al.* (W. H. Fitzpatrick), No. 34386 of the docket of said court, a copy of which said judgment is hereto annexed and made part hereof.

By reference to the annexed certificate of the recorder of mortgages it appears that said property is free of all encumbrances in the name of said vendor except—

(419-564) The assumption he took up to the sum of $9,500.00, int., &c., Feb. 4, '91, as per act before Jos. H. Spearing, not. pub., dated January 30, '91, against said above-described square and others of—

326 (180) The one Thomas L. Lallance granted in favor of his vendors, Jan. 15, '86, Orloff Lake, to secure the sum of $9,500.00, int., &c., as per act before Jos. H. Spearing, N. P., dated Dec. 1st., 1885, against said above-described square and others.

And herein intervened Mr. Maurice Kauffmann, one of the defendants in said suit, who declared that for a valuable consideration he hereby consents to this sale and transfer being made to said Reese, to whom he hereby transfers his rights; to have and to hold said property unto said purchaser, *their* heirs and assigns forever. These presents are made and accepted for and in consideration of the price and sum of ($2,500.00) twenty-five hundred & $\frac{00}{100}$ dollars, which the said Spearing, agent, *and* etc., hereby acknowledges to have received in the manner and form following, to wit: The sum of (833.33) eight hundred & thirty-three & $\frac{33}{100}$ dollars in cash, current money, for which he, in said capacity, hereby grants full
acquittance and discharge, and for the balance of said pur-
37 chase price, to wit, the sum of ($1,666.67) sixteen hundred
and sixty-six & $\frac{67}{100}$ dollars, said purchasers have furnished their two promissory notes, made and signed by themselves to their own order and by them endorsed, dated the 24 day of February, 1892, and payable as follows, to wit, each of said notes for the sum of eight hundred and thirty-three & 33½–100 dollars, payable respectively at one and two *tears* after date.

Which said note stipulate- to bear — at the rate of eight per cent. per annum from the date of said notes until paid, and which said promissory note, after having been paraphed *ne varietur* by me, undersigned notary, for identification with this act, has been de-

livered to said vendor, who acknowledges the receipt thereof, as well as of the cash portion of this sale.

And in order to secure the full and punctual payment of said promissory note in capital and all interest thereon as aforesaid vendor's lien and privileges and special mortgage on the herein described and conveyed property in favor of said vendor and any future holder or holders of said promissory note are hereby expressly retained by said vendor and granted by the said purchaser-, who hereby binds themselves and their heirs and assigns not to sell, alienate, or encumber the said property to the prejudice of this act.

Said purchaser- furthermore bind themselves and their heirs or assigns to insure within twenty-four hours from this date and to keep insured the buildings and improvements on said property against loss by fire, until the full and final payment of said promissory note, in one or more good and solvent insurance company or companies doing business in this city, to the amount of said promissory note or any balance which may be due thereon, and to transfer such policy or policies of insurance to said vendor or any holder or holders of said promissory note, and in default of said purchaser causing such insurance to be effected and transferred, said vendor or any holder or holders of said promissory note is and hereby — authorized to cause such insurance to be made and effected at the cost, charge, and expense of said purchaser; but this clause
38 shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings and improvements. The reimbursement of all sums paid by the holder or holders of said promissory note for that purpose, as well as all attorneys' fees and costs as *is* hereinafter provided for, shall also be secured in their payment by the special mortgage and privilege herein retained and granted, and in the event of suit being instituted for the recovery of all or any portion of said promissory note such attorneys' — and costs shall be collectible in the same manner, under the same process, and at the same time as the principal claim.

Said purchaser further declared that in case of the non-payment of all or any portion of said promissory note at maturity and as stipulated it shall be lawful for and they hereby authorize any holder or holders thereof to cause all and singular the herein described and conveyed property to be seized and sold under executory or other legal process, said purchaser hereby confessing judgment in favor of any and all holder or holders of said promissory note, together with all interest therein, costs, and attorneys' fees, which attorneys' fees, however, are hereby fixed at five (5%) per cent. on the amount for which the seizure of judgment may be obtained or proceedings taken;

The aforesaid property to remain so mortgaged until the full and final payment of said note, together with all costs, charges, and expenses herein stipulated.

By reference to the annexed certificate of register of conveyances

it does not appear that said vendor has heretofore alienated said property.

And herein intervened John F. Spearing, who, as the last holder and owner of nineteen promissory notes made and signed by Thomas L. Lallance, dated Dec. 1st, 1885, to the order of and endorsed by said Lallance, each for the sum of five hundred dollars, payable on the first day of Jan., 1886, & on the first of
39 each and every succeeding month up to the first day of July, 1887, inclusive, aggregating nine thousand five hundred & $\frac{00}{100}$ ($9,500.00) dollars, secured by special mortgage & vendors' lien & privilege in favor of Orloff Lake on the property herein described and other property, as per act before Jos. H. Spearing, not. pub., dated Dec. 1st, 1885, recorded in mortgage office, Book 326, fo. 180; which said notes and mortgage were assumed by said Lang, vendor herein, as per his said act of purchase before Jos. H. Spearing, not. pub., Jan. 30, 1891, recorded in mortgage office, B'k 419, fo. 564; and said J. F. Spearing, as the last holder and owner of said notes, declared that for a valuable consideration he does hereby release the above-described and herein-conveyed property from the effects of said mortgage, and he does hereby authorize and instruct the recorder of mortgages for this parish to cancel and erase the above-described mortgage in favor of Orloff Lake for ($9,500.00) nine thousand five hundred & $\frac{00}{100}$ dollars, granted by said T. L. Lallance, as per act before J. H. Spearing, not. pub., Dec. 1st, '85, recorded in B'k 326, fo. 180, and the assumption of said mortgage by said Lang, as per act before J. H. Spearing, not. pub., Jan. 30, '91, recorded in B'k 419, fo. 564, only so far as the above-described and herein-conveyed property is concerned & no further, and I, said notary, have marked this partial release on each of said notes.

By reference to the annexed city and State tax certificates it will be seen that the property herein conveyed is free of all taxes up to and including those for the year 1891, and the purchaser assumes the taxes for the year 1892 and subsequent years.

Said Spearing, attorney, &c., declared that this said principal, Lang, was married when he purchased said property, and that his wife is still living.

Thus done and passed in my office, in the city of New Orleans aforesaid, on the day, month, and year first above written, in the presence of Mes-rs. Jno. C. Ricks and Felix J. Chastant, competent witnesses, residing in this parish, who hereunto sign their names with the said parties and me, notary, after due reading of the whole.

40 (Original signed) J. ZACH. SPEARING.
W. H. FITZPATRICK.
H. C. REESE.
MAURICE KAUFFMANN.
JOHN F. SPEARING.
CHAS. B. UPTON.

JNO. C. RICKS.
FELIX J. CHASTANT.

Registered in conveyance office, in Book 140, folio 512.
New Orleans, 25 February, 1892.
(Signed) A. J. VILLERE, *Register.*

Recorded in the mortgage office, in B. 443, fo. 596. —— ——, not. pub.
New Orleans, February the twenty-fifth, 1892.
(Signed) A. M. HAYDEL.
(Signed) GEO. GUINAULT, *R. M.*

A true copy.
(Signed) CHAS. B. UPTON, *Not. Pub.*

Act of sale from the State of Louisiana to Orloff Lake, of date Nov. 4, 1885, together with certificate of registration of same in the conveyance office, in Book 121, fo. 899. Offered in evidence by J. H. Lang, defendant, and W. H. Fitzpatrick & H. C. Reese, warrantors.

No. 676. November 4, 1885. Sale—State of Louisiana, R. Maria Del Castillo to O. Lake.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this fourth day of November, in the year of our Lord the one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth, before me, Joseph Hall Spearing, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Deposito, the duly appointed and authorized deputy of James D. Houston, State tax-collector of the First or Upper district of the city of New Orleans aforesaid, duly commissioned and qualified, who declared that in pursuance of and by virtue of the power in him vested by the act of the legislature of this State at the session of 1884, being act No. 82, approved July 10th, 1884, and the laws in such cases provided, he proceeds at the earliest date to advertise for sale at public auction all property situated in the upper districts of this city, together with all the improvements thereon, on which there remained unpaid taxes due to the State prior to December 31st, 1879; that all such property, with the improvements, &c., was advertised three times in thirty days in English, in a daily paper published in the city of New Orleans, to wit, The Daily States, the last advertisement occurring on the day such property was advertised to be sold, said property being advertised for sale at the St. Charles auction exchange in this city; that such properties were always advertised in the name of the party in whose name the same was assessed, and, when it was known, in the name of the present owner of the same; that said advertisements described or identified said property and designated the time and place of offer-

41

ing; that after having complied with all the requisites of law the following-described property, with all the improvements thereon, to wit:

A certain square of ground in the 6th district of the city of New Orleans, bounded by Prytania, Pitt, & Eleanor streets & Nashville avenue, designated as square No. 48; said square No. 48 measures 240 feet front on each Pitt & Prytania streets by 300 feet front on each Eleanor street & Nashville avenue, being the same property acquired by Rafael Del Castillo from Jos. Flint, as per act before T. O. Stark, N. P., Dec. 23, 1851, registered in C. O. Jefferson Transcripts, Book 3, folio 331, for sale at public auction on the 30th day of July, 1885, at the hour of three o'clock p. m., at the
42 St. Charles auction exchange, in this city, on St. Charles St. between Common and Gravier streets.

And said tax-collector further declared that under the terms and provisions of said act No. 82 of 1884 the aforesaid-described property and improvements were advertised and offered for sale, as herein stated and according to law, to enforce the payment of the unpaid State taxes due on and by said property for the years 1876, 1877, 1878, which amounted to the sum of thirty-eight & $\frac{50}{100}$ dollars ($38.50), and which State taxes were due and unpaid at the date of the sale of said property to the purchaser herein named; that said property and improvements were advertised as being duly and legally assessed in the name of Rafael Maria Del Castillo for the years 1876, 1877, 1878, and as the property of R. M. Del Castillo or his or her estate and heirs, the present owner; that after having complied with all other legal requisites he did expose and offer the said hereinbefore-described property and improvements for sale at public auction, at the said St. Charles auction exchange, on St. Charles street between Common & Gravier streets, in this city (being the place designated in said advertisement), on the 30th day of July, 1885, to enforce the payment of the aforesaid unpaid State taxes; that at said place and last date mentioned he did announce in a loud and audible voice the conditions and terms of said sale, when John F. Spearing, as the attorney-in-fact of Orloff Lake, as per power of attorney before J. Z. Spearing, N. P., on the 15th day of August, 1885, being the last and highest bidder for said property in the sum of thirty-five dollars ($35), the said property and improvements were adjudicated according to law to the said Spearing, agent, &c., for account of said Lake for said price and sum of thirty-five dollars ($35), the said price bid for said property being in full and final payment and satisfaction of all the State, city, parish, and municipal taxes due on or by said property prior to Dec. 31, 1879, together with all interests, costs, and charges on the same, and for all other taxes, tax liens, and tax privileges which fell
43 due prior to Dec. 31st, 1879, according to the provisions of said act No. 82 of 1884; that on said property there was due and unpaid at the time of said adjudication and sale the taxes due to the city of New Orleans for the years 1877, 1878, 1879, amounting to the total sum of forty-five dollars ($45.00), and now, in pursuance of said adjudication and by virtue of said act No. 82 of 1884 and of

the provisions of the laws in such cases provided, and for said consideration of thirty-five dollars ($35) paid by said Spearing, agent, &c., for account said Lake, the receipt whereof is hereby acknowledged, the said tax-collector, for and in the name and on behalf of the State of Louisiana, does by these presents sell, assign, transfer, and deliver unto the said Lake, through said Spearing, agent, &c., here present, accepting these presents and purchasing for said Lake, his heirs and assigns, the property hereinbefore described, together with all the improvements and rights thereon belonging, giving and granting to said purchaser an absolute and irredeemable title to said property, with the rights to immediate possession thereof and free of all mortgages, liens, and privileges except for the State & city taxes for the year 1880 and subsequent years, the State of Louisiana hereby agreeing to warrant and defend the title of said purchaser, and in case of eviction or failure on the part of the State to give an absolute and perfect title to said property to refund to said purchaser the said amount paid by him to the State for said property. The said purchaser hereby assumes and promises to pay all the State, city, and municipal taxes on said property for the year 1880 and subsequent years, together with all interest, costs, charges, fees, and commissions which may be due and not paid.

By reference to annexed certificate of the register of conveyances, dated October 27, 1885, it does not appear that said Rafael Del Castillo has alienated the aforesaid described property acquired by her aforesaid on Dec. 25, 1851, & registered in C. O. Jeff. Trans., Book 3, folio 331, except sale to State tax-collector, sale tax 1880, Dec. 22, 1883, B'k 122, fo. 288; sale to State tax-collector,
44 sale tax 1881, June 25, 1884, Book 122, fo. 315; sale to State tax-collector, tax 1882, Dec. 13, 1884, Book 122, fo. 331; sale to State tax-collector, tax 1883, Dec. 13, 1884, Book 122, fo. 359.

In witness whereof the said James D. Houston, tax-collector aforesaid, through said Joseph Deposito, his duly appointed and authorized deputy, executes this act of sale in the name and on the behalf of the State of Louisiana in favor of the said O. Lake, at my office, in the city of New Orleans, on the date first above written, in the presence of James D. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with said purchaser and me, notary, after reading the whole.

(Original signed) J. D. HOUSTON,
State Tax-collector, Upper District of City of New Orleans.

Registered in conveyance office, Book 121, fo. 899.
New Orleans, Nov. 5, 1885.
(Signed) C. H. BREEN, *D'y R. C.*,
Per J. D. HOUSTON, *D'y.*
ORLOFF LAKE,
Per JOHN F. SPEARING.
J. Z. SPEARING.
R. SAUNDERS SCOTT.
JOS. H. SPEARING, *Not. Pub.*

A true copy.
(Signed) JOS. H. SPEARING, *Not. Pub.*

Recorded in the mortgage office, in Book 445, folio 390.
New Orleans, August nineteenth, 1891.
(Signed) AM. M. HAYDEL.
V. J. JOUBERT, *D. R. M.*

45 Act of sale from Orloff Lake to Thomas L. Lallance, dated Dec. 1st, 1895, together with the certificate of registration of the sale in the conveyance office, Book 121, folio 990. Offered in evidence by defendant and warrantors.

No. 703. December 1st, 1885. Sale and mortgage—Orloff Lake to Thomas L. Lallance.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that on this first day of the month of December, in the year of our Lord one thousand eight hundred and eighty-five (1885) and of the Independence of the United States of America the one hundred and tenth, before me, Joseph Hall Spearing, a notary public duly commissioned and qualified — and for the parish of Orleans, State of Louisiana aforesaid, and in the presence of witnesses hereinafter named and undersigned, personally came and appeared Orloff Lake, of this city, who declared that for the price and on the terms hereinafter set forth he does by these presents grant, bargain, sell, transfer, assign, and deliver without any warranty or guarantee whatsoever, but with full substitution and subrogation in and to all his rights and actions in warranty against all preceding vendors and parties whatsoever, unto Thomas L. Lallance, also of this city, here present, accepting their presents and purchasing for himself, his heirs and assigns, the following-described properties, together with all the buildings and improvements thereon and rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, to wit:

First. Two (2) certain lots of ground in the 1st district of the city of New Orleans, in square bounded by Magazine, Constance, Calliope, and Poeyfare streets, designated as lots No. 18 & 19, also known as lots No. 6 & 7, which adjoin each other and meas-
46 ure 60 feet front on Poeyfare street by a depth of 97 feet 2 inches and five lines; acquired from John O. McCall July 25, 1885; registered in conveyance office, B'k 121, folio 673, July 27, 1885.

Second. Two certain lots of ground adjoining each other in the 4th district of the city of New Orleans, in square bounded by White or Basin, Laurent or Jackson streets, designated as lots Nos. 7 & 8, in square No. 295. Said lots Nos. 7 & 8 together measure 60 feet and nine inches front on Philip street by a depth of 122 to 124 feet 6 inches; acquired from Mrs. Margaret Kavanagh, widow of Owen Kavanagh, Oct. 16th, 1885; registered in con. office, B'k 123, fo. 594.

Third. Four (4) certain lots of ground in the 6th district of the

city of New Orleans, in square bounded by Tchoupitoulas, Front, Joseph, & Octavia streets, designated as lots Nos. 7, 8, 9, & 10, in square 69. Said lots Nos. 7, 8, & 9 adjoin each other and measure 93 feet front on Front street by a depth of 110 feet. Lot No. 10 is in the rear of above lots and measures 30 feet front on Octavia street by a depth of 139 feet and six inches. Acquired Oct., '85, from Mrs. Adelaide Gordy, wife of Jno. B. Robertson; registered in con. office, B'k 121, folio 850, Oct. 17, 1885.

Fourth. A certain lot of ground in the 6th district of the city of New Orleans, in square bounded by Tchoupitoulas, Jersey, Soniat, & Robert streets, designated as lot No. 19, in square No. 123, measuring 30 feet & 2 inches front on Soniat street by a depth of 120 feet; acquired from H. R. Arbo, Edw'd B. & John L. Lacoste Nov. 4th, 1885; registered in con. office, B'k 121, folio 900, Nov. 5th, 1885.

Fifth. A certain square of ground in the 6th district of the city of New Orleans, bounded by Pitt, Prytania, Webster, and Henry Clay streets, designated as square No. 50, measuring 254 feet by 257 feet and 290 feet by 300 feet; acquired from H'y Chiapella Nov. 4, '85; registered in con. office, B'k 121, folio 900, Nov. 5, 1885.

Sixth. One-half of a certain square of ground in the 6th district of the city of New Orleans (Greenville), bounded by Oliver, Wall, Lowerline, & Pine streets, designated as ½ of square 35 of said district. Said ½ of square 35 contains 10 lots numbered from 11 to 20, inclusive. Lots Nos. 11, 12, 13, & 14 measure each 30 feet front on Wall street by 120 feet in depth. Lots Nos. 15 & 16 measure each 30 feet front on Pine street by 120 feet in depth. Lots Nos. 17, 18, 19, & 20 measure each 30 feet front on Oliver street by 120 feet in depth. Acquired from J. F. Bradford or his heirs & J. R. Russell Nov. 4, 1885; registered in conveyance office, Book 121, folio 900, Nov. 5, 1885.

47

Seventh. A certain square of ground in the 6th district of the city of New Orleans (in Burhteville), bounded by Plaquemine, Perrier, & Webster streets & Henry Clay avenue, designated as square No. 42, in said district. Said square measures 279 feet by 289 feet, more or less, and contains 22 lots, numbered from 1 to 22, inclusive; acquired Nov. 4, '85, from Edmund Burhte; registered in conveyance office, Book 121, folio 899, Nov. 5, 1885.

Eight-. A certain square of ground in the 6th district of the city of New Orleans, bounded by Prytania, Pitt, & Elinor streets and Nashville avenue, designated as square No. 48. Said square measures 240 feet front on each Pitt & Prytania streets by 300 feet front on each Elinor street and Nashville avenue; acquired Nov. 4, 1885, from R. Maria Del Castillo; registered in con. office, B'k 121, folio 899, Nov. 5, 1885.

Ninth. A certain square of ground (comprising 20 lots) in the 6th district of the city of New Orleans, bounded by Esther, Ann Pine, and Lowerline streets, designated as square No. 45 of said district. Said square measures 300 feet on each Pine and Lowerline streets and 250 feet on each Esther and Ann streets and contains 20 lots, numbered from 1 to 20, inclusive; acquired Nov. 4, '85,

from Maria J. Billaud; registered in con. office, Book 121, folio 899, Nov. 5th, 1885.

Tenth. A certain square of ground in the 6th district of the city of New Orleans, designated as square No. 79 of said 6th district, bounded by Burthe, Second, Pine, & Broadway streets, and measures 240 feet on each Second and Burthe streets by 300 feet on each Pine and Broadway streets; acquired Nov. 4, 1885, from Henry
48 Blood; registered in conveyance office, Book 121, folio 899, Nov. 5, 1885.

Eleventh. A certain square of ground in the 6th district of the city of New Orleans, bounded by Pitt, Prytania, & Calhoun streets & Henry Clay avenue, designated as square No. 51. Said square measures 254 feet by 257 feet by 289 feet; acquired Nov. 4, '85, from Henry Chiapella; registered in con. office, Book 121, folio 900. Nov. 5, '85.

Twelfth. Three (3) certain lots of ground in the 6th district of the city of New Orleans, in square bounded by Pitt, Prytania, Leontine, & Valmont streets, designated as lots Nos. 3, 4, & 5, in square 358. Said lots measure each 28 feet & 10 inches front on Valmont street by a depth of 123 feet 1 inch; acquired Nov. 4, '85, from W. G. Hodges; registered in con. office, Book 121, folio 899, Nov. 5, 1885.

Thirteenth. Seven (7) certain lots of ground in the 6th district of the city of New Orleans, in square bounded by Pitt, Valmont, Boudousquie, & Leontine streets, designated as lots Nos. 14, 15, 16, 17, 18, 19, & 20, in square No. 397. Lots Nos. 14, 15, 16, 17, & 18 measure each 32 feet 7 inches & 4 lines front on Leontine streets by 109 feet 4 inches & 4 lines in depth. Nos. 19 & 20 measure each 30 feet front on Pitt St. by 130 feet 6 inches in depth. Acquired from W. G. Hodges Nov. 4th, 1885; registered in conveyance office, Book 121, folio 899; to have and to hold the said property unto the said purchaser or his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of ten thousand ($10,000) dollars, in part payment and deduction whereof the said purchaser has well and truly paid in ready and current money the sum of five hundred ($500) dollars to the said Lake, vendor aforesaid, who hereby acknowledged the receipt thereof and grants full acquittance thereof.

And for the balance of said purchase price, to wit, the sum of nine thousand five hundred ($9,500) dollars, the said purchaser has furnished his nineteen (19) promissory notes, each for the sum of five hundred (500) dollars, drawn and subscribed by him, said Lallance, to the order of himself and by him endorsed, dated
49 this day and payable, respectively, as follows, to wit: First note, on Jan. 1st, 1886; second note, on February 1st, 1886; third note, on March 1st, 1886; fourth note, on April 1st, 1886; fifth note, on May 1st, 1886; sixth note, on June 1st, 1886; seventh note, on July 1st, 1886; eighth note, on August 1st, 1886; ninth note, on September 1st, 1886; tenth note, on October 1st, 1886; eleventh note, on November 1st, 1886; twelfth note, on December 1st, 1886; thirteenth note, on January 1st, 1887; fourteenth note,

on February 1st, 1887; fifteenth note, on March 1st, 1887; sixteenth note, on April 1st, 1887; seventeenth note, on May 1st, 1887; eighteenth note, on June 1st, 1887; nineteenth note, on July 1st, 1887; which said notes stipulate to bear interest at the rate of eight per cent. per annum from date until paid, and the same, after having been paraphed *ne varietur* by me, the undersigned notary, to be identified herewith, were delivered to said Lake, who hereby acknowledges receipt thereof.

It is especially understood and agreed that in case of any one of the said notes not yet matured on their face value shall at once and *ipso facto* become due and payable and the amount represented by said notes not yet due on their face value shall at once become payable and exigible the same as each and all of said notes had regularly matured and had not been paid.

And now, in order to secure the full and punctual payment of the said notes at maturity, together with all interest, costs, and attorney's fees, special mortgage and vendor's lien & privilege are hereby retained and granted in favor of said vendor and of all future holders of the said notes on the property herein conveyed, which properties the said purchaser hereby binds himself not to sell, alienate, or in any way encumber, in whole or in part, to the prejudice of this act.

The said properties so to remain mortgaged and hypothecated with the full and final payment of the aforesaid promissory notes in capital and interest; and the said Lallance, purchaser, further declares that he does, by these presents, consent, agree, and stipulate that, in the event of the said promissory notes or any of them not being punctually paid at maturity, it shall be lawful for and he hereby authorizes the said vendor or any other holder or holders thereof to cause all and singular the said herein-before-described and herein-mortgaged properties to be seized and sold, under process issued by any competent court, without appraisement, to the last and highest bidder, payable cash, said Lallance hereby specially dispensing with all and every appraisement thereof, by these presents waiving and renouncing the benefits of appraisement and of law or parts of laws relative to the appraisement of movable or immovable effects, etc., seized and sold under executory or other legal process.

And Lallance hereby confesses judgment in favor of said vendor and of such person or persons who may hereafter acquire said notes or any part thereof to the full amount of said note-, together with all lawyer's fees, interest, costs, and charges, said lawyer's fees being fixed at four per cent. on the amount sued for.

By reference to the annexed certificate of the register of conveyances, dated this day, it does not appear that said Lake has alienated any portion of the property herein conveyed.

By reference to annexed certificate of the recorder of mortgages, it does not appear that there are any mortgages standing against the said property except the State taxes on said property for the years 1880 to 1885, inclusive.

Said purchaser binds and obligates himself to clear all of said properties from all taxes, city and State, which it may be claimed

are due by said properties, said purchaser declaring that none of the said city or State taxes are legally due by or on said properties.

Thus done and passed at my office, in the city of New Orleans, on the day, month, and year first above written, in the presence of James Zacharie Spearing and Robert Saunders Scott, competent witnesses, who hereinto sign these presents with said appearers and me, notary, after reading of the whole.

51 (Original signed) ORLOFF LAKE.
THOMAS L. LALLANCE.
R. SAUNDERS SCOTT.
JOSEPH H. SPEARING,
Not. Pub.

Registered in the conveyance office, Book 121, folio 990.
New Orleans, Jan. 13, 1886.
C. H. BREEN, *D'y R. C.*

Recorded in mortgage office, Book 326, folio 180.
New Orleans, Jan. 15th, 1886.
FRANK WALL, *Cl'k.*
GEO. GINAULT, *D. R.*

A true copy of the original of record in my notarial records.
In witness whereof I hereunto sign my name, affixed my seal of office, at the city of New Orleans, on this sixth day of February, 1891.
JOS. H. SPEARING, *Not. Pub.*

Act of sale from Thomas L. Lallance to J. H. Lang, together with certificate of registration of same in the conveyance office, in Book 136, folio 364. Offered in evidence by defendants and warrantors.

Jan. 30, 1891. Sale—Thomas L. Lallance to J. H. Lang.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this thirteenth day of January, in the year of our Lord one thousand eight hundred and ninety-one and of the Independence of the United States the one hundred and fifteenth, before me, Joseph H. Spearing, a notary public in the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas L. Lallance, a resident of the parish of De Soto, in this State, who declared that for the price and on the terms hereinafter stipulated he does by these presents sell, transfer, assign, convey, and deliver, with full warranty and guarantee against — claims whatsoever and with full substitution and subrogation in and to all his rights and actions in warranty against all preceeding vendors, unto John H.

52

Lang, a resident and citizen of Harrison county, State of Mississippi, here present, accepting these presents and purchasing for himself, his heirs and assigns forever, the following-described property, to wit:

(1st.) Two certain lots of ground adjoining each other in the 4th district of the city of New Orleans, in square bounded by Philip, White (or Basin), Laurent, & Jackson streets, designated as lots Nos. 7 & 8, in square No. 295, said lots Nos. 7 & 8 together measuring 60 feet and nine inches on Philip street and from corner White & Philip streets by a depth of 122 to 124 feet 6 inches.

Second (2). Four certain lots of ground in the 6th district of the city of New Orleans, in square bounded by Tchoupitoulas, Front, Joseph, & Octavia streets, designated as lots Nos. 7, 8, 9, 10, in square 69. Said lots Nos. 7, 8, & 9 adjoin each other and measure 93 feet on Front street by a depth of 110 feet. Lot No. 10 is in the rear of above lots and measures 30 feet front on Octavia street by a depth of 139 feet and 6 inches.

Third (3). A certain lot of ground in the 6th district of the city of New Orleans, in square bounded by Tchoupitoulas, Jersey, Soniat, & Robert streets, designated as lot 19, in square No. 123, measuring 30 feet & 2 inches front on Soniat street by a depth of 120 feet.

Fourth (4). One-half of a certain square of ground in 6th district of the city of New Orleans (Greenville), bounded by Oliver, Wall, Lowerline, & Pine streets, designated as one-half of square 35 of said district. Said ½ of square 35 contains 10 lots numbered from 11 to 20, inclusive, lots Nos. 11, 12, 13, & 14 measuring each 30 feet front on Wall street by 120 feet in depth. Lots Nos. 15 & 16
53 measure each 30 feet front on Pine street by 120 feet in depth. Lots Nos. 17, 18, 19, & 20 measure each 30 feet on Oliver street by 120 feet in depth.

Fifth (5). A certain square of ground in the 6th district of the city of New Orleans (in Burtheville), bounded by Plaquemine, Perrier, & Webster streets & Henry Clay avenue, designated as square No. 42, in said district. Said square measures 279 by 289 feet, more or less, & contains 22 lots, numbered from 1 to 22, inclusive.

Sixth (6). A certain square in the 6th district of the city of New Orleans, bounded by Prytania, Pitt, and Elinor streets and Nashville avenue, designated as square No. 48. Said square measures 240 feet front on each Pitt & Prytania streets by 300 feet front on each Elinor streets and Nashville avenue.

Seventh (7). A certain square in the 6th district of the city of New Orleans, bounded by Esther, Ann, Pine, and Lowerline streets, designated as square No. 45 of said district. Said square measures 300 feet on each Pine and Lowerline streets and 250 feet on each Esther and Ann streets, and contains 20 lots, numbered from 1 to 20, inclusive.

Eighth (8). A certain square of ground in the 6th district of the city of New Orleans, designated as square No. 79 of said 6th district, bounded by Burthe, Second, Pine, & Broadway streets, and measures 240 feet on each Second and Burthe streets by 300 feet on each

Pine and Broadway streets, the foregoing properties being a portion of the same property acquired by said vendor as per act before me, undersigned notary, dated December 1st, 1885, duly registered in conveyance office, in Book 121, folio 990.

Ninth (9). Twelve (12) certain lots of ground, *and* together with all the buildings and improvements thereon and rights, ways, and privileges and appurtenances thereunto belonging or in anywise appertaining, in the Seventh district of the city of New Orleans, in the square bounded by Plum, Adams, Burdette, & Fourth streets, designated as lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12, in square No. 155, formerly square 46 A, on a plan by H. A. Boudousquie, dated Feb. 3rd, 1871, deposited in office of Theo. Guyol, N. P. Said lots 1, 2, 3, 4, 5, 6, 7, 8, & 9 measure 270 feet front on Fourth street by 120 feet in depth. Lot No. 10 measures 30 feet front on
54 Fourth street by 120 feet in depth. Lots 11 & 12 measure 60 feet front on Adams street by 150 feet in depth, and said lot No. 1 forms the corner of Fourth and Burdette streets, and lot No. 10 forms the corner of Fourth and Adams streets, the same being a portion of the same property acquired by the late Philip McIntyre, Jr., from Canal bank, as per act before Theodore Guyol, not. pub., dated March 15th, 1871, duly registered in conveyance office, in Book 5, folio 354, Carrollton transcripts.

Tenth (10th). Seventeen (17) certain lots of ground, together with all the buildings and improvements thereon and rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, in the Seventh district of the city of New Orleans, in the square bounded by Plum, formerly Josephine; Short, Washington, & Fourth streets, designated as lots Nos. 1, 2, 3, 4, 5, 6, 7, 11, 12, 17, 18, 19, 20, 21, 22, 23, & 24, in square No. 153, formerly square B 48, on a plan by Louis Bringier, surveyor, dated 12th Nov., 1835, deposited in the office of J. B. Marks, late N. P. Lot No. 1 measures 30 feet front on Washington street by a depth of 107½ feet. Lots Nos. 2, 3, 4, 5, 6, & 7 measure 180 feet front on Washington street by 107 feet & 6 inches in depth. Lots Nos. 11 & 12 measure 60 feet front on Josephine, now Plum, street by 150 feet in depth. Lots Nos. 17, 18, 19, 20, 21, & 22 measure 180 feet front on Short street by 107 feet 6 inches in depth. Lots Nos. 23 & 24 measure 60 feet front on Fourth street by 150 feet in depth. Said lot No. 1 forms corner of Washington & Fourth streets, and said lot No. 22 forms the corner of Short & Fourth streets. All measurements are between equal and parallel lines, the two last-described properties being the same property acquired by said vendor from Mrs. Lucretia Davis, widow by first marriage of Philip McIntyre, Jr., now wife of George Ausson; and Clarence E. McIntyre & George McIntyre, heirs of Philip McIntyre, Jr., as per act before me, undersigned notary, dated October 25th, 1890, duly registered in conveyance office, in Book 137, folio 238:

To have and to hold said property unto said purchaser, his heirs and assigns forever.

55 These presents are made and accepted for and in consideration of the assumption by said purchaser of the mortgage for

nine thousand five hundred ($9,500) dollars against said properties, recorded in mortgage office, in Book 326, folio 180; which said mortgage is represented by nineteen promissory notes, each for five hundred ($500) dollars, dated December 1, 1885, made and signed by the vendor herein to his own order and by him endorsed; which said notes are identified with the said act of purchase by said Lallance of said properties, passed before me, undersigned notary, and dated, as aforesaid, December 1, 1885; which said 19 notes, each for $500, said puchaser assumes and promises to pay.

At the time of the purchase of the property herein — was — unmarried man, and that the wife he has since married is still alive.

By reference to the annexed certificate of the register of conveyances, it does not appear that said vendor has heretofore alienated said property.

The parties *have hereto* dispensed with a mortgage certificate, they both declaring that they are perfectly aware of all the mortgages on said properties.

All the city and State taxes for the years 1888, 1889, and 1890 have been paid, said parties declaring that all other taxes claimed as due by and on said property are null and void and are not due or owing, and that said properties are free of all legal taxes whatsoever.

Thus done and passed, in my office, in the city of New Orleans aforesaid, on the day, month, and year first above written, in the presence of Mes-rs. J. Zach. Spearing and Harry W. Glaser, competent witnesses, residing in this parish, who hereunto sign their names with the said parties and me, notary, after due reading of the whole.

N. B.—Twenty-seven words erased on page seven and approved before signing.

(Original signed) THOMAS L. LALLANCE.
JOHN H. LANG.
J. ZACH. SPEARING.
HARRY W. GLASER.
JOS. H. SPEARING, *Not. Pub.*

Registered in conveyance office, Book 136, folio 364.
New Orleans, Jan. 30th, 1891.
(Signed) A. BUISSON, *D. R.*

56 Recorded in mortgage office, Book 419, folio 564.
New Orleans, Feb. 4, 1891.
(Signed) J. H'Y FORCELLE, *Cl'k.*
(Signed) V. J. JOUBERT, *D. R.*

A true copy.
(Signed) JOS. H. SPEARING, *Not. Pub.*

Copy of Advertisement. Offered in Evidence by Plaintiff. Filed Jan. 4th, 1895.

Tax sales.

Office of the collector of State taxes, Upper district, 77 Carondelet street.

NEW ORLEANS, LA, *June 30th*, 1885.

By virtue of the power in me vested by act 82 of 1884, approved July 10th, 1884, and — pursuance of the provisions of the same and of the laws in such cases provided, I, James D. Houston, State tax-collector of the Upper or First district of New Orleans, in person or by deputy, will offer for sale, at public auction, all the property hereinafter described, together with all the improvements thereon, at the St. Charles auction exchange, on St. Charles street between Common and Gravier streets, in this city, beginning, at 2.30 p. m., on Thursday, the thirtieth day of July, 1885, and continuing from day to day until all the property hereinafter described has been offered for sale; which said properties have heretofore been adjudicated to the State according to law for the unpaid State taxes for the years enumerated at the close of the description of each piece of property hereinafter described.

In the event that all the forms of law have not been complied with in said adjudication to the State and the adjudication to the State not perfect, the taxes for said years are, nevertheless, due to
57 the State, and the properties hereinafter described, with all the improvements, will be offered for sale on said day and following days until said list is completed, to enforce the payment of the unpaid taxes due to the State for said years enumerated at the close of each description; also after each description are enumerated the unpaid taxes due to the city of New Orleans prior to December 31st, 1879.

Each piece of property hereinafter described will be offered for sale separately to enforce the payment of taxes for said years, and will be adjudicated and sold to the last and highest bidder, according to the terms and provisions of said act No. 82 of 1884. In pursuance of each adjudication a deed of sale by authentic act will be executed for each piece of property and improvements in favor of each purchaser, and duly certified copies of such deeds will be full proof of all contained therein.

All sales vest in the purchaser an absolute and perfect title to the property sold without any redemption whatever, and the purchaser is entitled to immediate possession of the property as sole owner thereof in case the State should fail to give the purchaser an absolute title to the property sold, or if the title to the purchaser is null and void for any cause, then the amount paid by the purchaser to the State for said property will be refunded him, the State, under the provisions of said law, guaranteeing the titles to the property sold under the said act, and the State tax-collector is authorized

under said act to refund, and will refund, to purchasers the amounts paid by them in case the State fails to give an absolute title to the property sold. The price paid for each piece of property will be in full payment of all State, parish, and city and municipal taxes due on the same prior to January 1st, 1880, and the recordation in the mortgage office of the deeds or of a copy thereof will operate as a cancellation of all State, city, municipal, and parish taxes due prior to January 1st, 1880, and of all mortgages, liens, etc., to the date the property is sold.

The properties hereinbefore referred to are described as
58 follows, to wit:

Descriptions of property from No. 323 to 339, both inclusive, not arranged alphabetically as to names.

340, a certain square of ground in the Sixth district of the city of New Orleans, bounded by Prytania, Pitt, Elinor streets and Nashville avenue, designated as square No. 48; said square No. 48 measures 240 feet front on each of Pitt and Prytania streets by 300 feet front on each of Elinor street and Nashville avenue.

Which property was assessed for the years 1876, 1877, 1878 in the name of Rafael Maria Del Castillo; of which property R. M. Del Castillo or her estate and heirs are the present owners.

And on which property the State taxes for the following years, viz, 1876, 1877, 1878, amounting to $38.50, are now due and unpaid.

And also on which property the city taxes for the years 1877, 1878, and 1879, amounting to $45.00, are now due and unpaid.

Description of property from No. 341 to 388, both inclusive, not arranged alphabetically.

Extract from the minutes.

MONDAY, *April* 16, 1894.

R. M. CASTILLO
vs.
W. L. MCCONNICO. } 42007.

The exceptions in this case filed by defendant came up this day for hearing—present, W. S. Parkerson, Esq., for plaintiff; R.H. Lea, Esq., for defendant & exceptor—and after hearing pleadings and counsel and for the reasons orally assigned in open court—

It is ordered that said exception be overruled.

Extract from the minutes.

MONDAY, *June* 11*th*, 1894.

The exception of warrantor J. H. Lang, filed herein, came
59 up this day for trial—present, W. S. Parkerson, Esq., for plaintiff; J. Zach. Spearing, Esq., for defendant—and after hearing pleadings and counsel said exception was ordered overruled.

Record No. 44386, civil district court, entitled J. H. Lang *vs.* Maurive Kauffmann *et al.*, offered in evidence by defendant and warrantors.

Petition. Filed Nov. 30, '91.

To the honorable civil district court of the parish of Orleans:

The petition of John H. Lang, a resident of the county of Harrison, State of Mississippi, respectfully represents that he is the sole and only owner of the following-described property, to wit, a certain square of ground in the 6th district of this city, bounded by Nashville avenue, Prytania, Pitt, and Elinor streets, designated by the No. 48; which said square measures 300 feet on each of Nashville avenue and Elinor St. and 240 feet on each Prytania and Pitt Sts., more or less, being the same property which petitioner acquired from T. L. Lallance, as per an act of sale passed before J. H. Spearing, not. pub., in this city, on Jan. 30th, 1891; registered in conveyance office, B'k 146, fo. 364; since which time petitioner has been in full, quiet, and uninterrupted possession of said property as owner, and on which he has paid all taxes due since 1880.

Petitioner further shows that on the 20th day of July, 1891, he entered into a written contract with Messrs. Maurice Kauffmann and W. H. Fitzpatrick, also resident of said city, by which petitioner bound and obligated himself to sell to said Kauffmann & Fitzpatrick and said Kauffmann & Fitzpatrick bound and obligated themselves to purchase from petitioner the aforedescribed square of ground for the price and sum of twenty-five hundred dollars ($2,500.00), payable one-third cash and balance in one and two years after date, with 8 % interest from date; that said Kauffmann & Fitzpatrick now refuse to comply with their said contract without any just or legal cause or excuse; that said Kauffmann & Fitzpatrick should be compelled to comply with their said contract, to accept and pay for said property. Petitioner annexes and files herewith a duly certified copy of said act of sale by which he purchased said property. Petitioner alleges that all the forms of law were complied with in the assessment and sale of said property, and that Rafael Del Castillo, who was the owner of said property previous to petitioner's acquisition thereof, was duly and legally notified of the assessment of said property for all the years for which it was sold and of the advertisement and sale thereof under act No. 82, 1884.

The premises considered, petitioner prays that said Maurice Kauffmann & W. H. Fitzpatrick be duly cited to answer this demand; that after due proceedings there be judgment in favor of petitioner and against said M. Kauffmann & W. H. Fitzpatrick, ordering them and each of them to accept the said property and the title to the same, as tendered by petitioner, and pay to petitioner as the price thereof the sum of twenty-five hundred ($2,500.00) dollars, payable one-third cash and the balance in one and two years after date, with

8 % interest from date, with the usual security clauses; and petitioner further prays for all costs and general relief.

(Signed) J. ZACH. SPEARING,
Att'y for Lang.

Service accepted.

(Signed) HEWES T. GURLEY,
Att'y for M. Kauffmann & W. H. Fitzpatrick.

Answer of Defendant-. Filed Dec. 26th, 1891.

LANG *et al.* *vs.* KAUFFMANN *et al.* } No. 34386. Civil District Court, Parish of Orleans.

Answer. Filed Dec. 2[illegible]th, 1891.

61 Now into court comes defendants, and for answer to plaintoff's petition den*ies* all and singular the allegations therein contained, except as herein specially admitted.

Def'ts admit that they agreed to the purchase of the property described in plaintiff's petition for the price and upon the terms and conditions therein set forth, but allege that they declined to receive said property and pay therefor because of their opinion that plaintiffs had not just or legal title to said property or title translative of property.

The plaintiff acquired title from Thos. L. Lallance, by act before J. H. Spearing, on Jan. 13, 1891; that said Lallance acquired from Orloff Lake, by act before J. D. Spearing, on Dec., 1885; said Lake acquired from Maria Del Castillo, by act before Jos. D. Spearing, on Nov. 4, 1885; that said transfer from said Castillo to said Lake is what is commonly known as a tax title, it being a sale of said property by the State of Louisiana to enforce the payment of taxes for the years 1876, 1877, & 1878; that said sale was made under No. 82 of the act of the legislature of 1884.

That plaintiff's title to said property therefore rests upon said tax title, and that same is defective, null, and void in this, that it is an attempted divestiture of the title of the said property without previous notice to said owner and without compliance with the formalities prescribed by law for the sale of property for taxes.

That for the years for which the said taxes were levied the State of Louisiana was just recovering from the effects of the civil war, and all the records of the State were in confusion and disorder, and the State government was in a state of anarchy and disruption; that the records of the tax-collector were not properly kept and do not show with any degree of accuracy which taxes were paid and which not; that many of the tax records are destroyed and obliterated.

That defendants therefore have reason to believe the said taxes for which the said property was sold had been paid, and that the tax receipts showing such payment may at some future date
62 be produced and defendants' title thereby divested.

That no notice of said intended tax sale was given to the previous owner, nor were the assessments upon which the said sale was made valid and binding, and for radical defects on the face of said deed and in the proceedings had leading up thereto, as well as the assessment and pretended sale of said property, the title is bad and defective and not such a title as he is bound to take.

Therefore defendant- prays that plaintiff's petition be dismissed with costs; that their title be declared defective and invalid; that defendants be relieved from the acceptance of the same, and for all general and equitable relief.

HEWES T. GURLEY,
Att'y for Def'ts.

Note of Evidence. Filed Feb. 4th, '92.

J. H. LANG
vs.
M. KAUFFMANN *et al.*
No. 34386. Civil District Court, Div. A, Docket 5.

Note of evidence and testimony taken on the trial of the above entitled and numbered cause February 4th, 1892.

Present: J. Zach. Spearing, att'y for plaintiff, & Hewes T. Gurley, att'y for defendants.

Counsel for plaintiff offers, introduces, and files in evidence the following-mentioned documents, to wit:

(1.) A duly certified copy of the act of sale of the property in controversy under act 82 of 1884 from James D. Houston, State tax-collector, to Orloff Lake, passed before Joseph H. Spearing, not. pub., dated Nov. the 4th, 1885, and the registry thereof in the conveyance office of this parish, in B'k 121, folio 899, on Nov. 5th, 1885, said sale being for State taxes due previous to Dec. 31st, 1879; (2) a duly certified copy of the act of sale of said property from said Orloff Lake to Thomas L. Lallance, passed before said J. H. Spearing, not. pub., on Dec. 1st, 1885, and the registry thereof in
63 said conveyance office, in B'k 121, fo. 990, Jan. 13th, 1886; (3) a duly certified copy of the act of sale from said Thomas L. Lallance to Jno. H. Lang (plaintiff herein), passed before said J. H. Spearing, not. pub., on Jan. 30th, 1891, and the registry thereof in said conveyance office, in B'k 136, fo. 364, on Jan. 30th, 1891; (4) a certificate from the city comptroller showing that all city taxes on said property up to and including those for the year 1891 are paid; (5) a certificate from the State tax-collector of the 4th & 6th districts, showing that all State taxes on said property up to and including those for the year 1891 are paid; (6) the contract between the plaintiff and defendants herein, whereby said defendants bound themselves to purchase said property as alleged in the petition.

J. Zach. Spearing says that the late law firm of Jos. H. & J. Zach. Spearing, of which he was a member, was the attorney for said Lake, Lallance, and Lang, the successive owners of said property

since said tax sale in 1885; that said Orloff Lake obtained physical possession of said property shortly after he purchased same at said tax sale; that the said possession of said Lake was transferred to the successive purchasers of said property, and that J. H. Lang, plaintiff herein, now has the physical possession of said property; that all the taxes due on or by said property since 1880 have been paid respectively by said Lake, Lallance, and Lang.

Cross-examination:

Neither Lake, Lallance, or Lang has ever had any one to dispute their title or ownership to said property, nor have any suits been brought against them or any of them to evict them from the possession of said property, nor has any other person pretended to have any claim to the same since said tax sale.

Contract—Lang to Fitzpatrick and Kauffmann. Offered in Evidence by Plaintiff. Filed Feb. 4, '92.

Mr. John H. Lang, through his undersigned attorney-in-fact, hereby agrees and binds himself to sell and transfer unto Maurice Kauffmann and William H. Fitzpatrick the following-de-
64 scribed property: A certain square of ground in the 6th district, bounded by Nashville avenue, Prytania, Pitt, and Elinor Sts., designated as square No. 48, which said square measures 300 feet on each Nashville avenue and Elinor St. and 240 feet on each Prytania and Pitt Sts., more or less, being the property sixthly described in an act of sale of above and other property from Thomas L. Lallance to said Lang, passed before J. H. Spearing, not. pub., Jan. 30th, 1891, duly registered in con. office, B'k 136, folio 364, the said sale to be with full warranty and free of all taxes and mortgages except taxes for 1891, which are to be paid by said Fitzpatrick and Kauffmann. The price and consideration of this sale to be twenty-five hundred ($2,500) dollars, payable one-third cash, balance in one and two years, with 8% interest from date. Said Fitzpatrick and Kauffmann on their part binds *himself* to buy and accept said property for said price and on said terms and conditions and to pay said price for same. Act of sale to be passed before J. Zach. Spearing, not. pub., at the expense of said purchasers.

Words "Maurice Kauffmann" and "Kauffmann" & "buy" interlined and approved before signing.

New Orleans, July 24th, 1891.

(Signed) W. H. FITZPATRICK.
MAURICE KAUFFMANN.
JOHN H. LANG,
Per J. ZACH. SPEARING,
Att'y-in-fact.

Accepted.

(Signed) JOHN H. LANG,
p. pr. J. ZACH. SPEARING,
Att'y-in-fact.

City Tax Certificate. Offered in Evidence by Plaintiff. Filed Feb. 4th, '92.

COMPTROLLER'S OFFICE,
CITY OF NEW ORLEANS, LA., *Feb'y 3rd*, 1892.

By a research made this day on real estate in square No. 48, 15th assessment district, bounded by Nashville, Prytania, Pitt,
65 Elinor, 240 x 300, the city taxes appear as follows:

Year.	No. bill.	Name.	Tax.
1870	4926	R. Costello	Paid.
1871	5096	"	"
1873	6751	"	"
1874	6618	"	"
1875	6455	"	"
1876	6180	"	"
1877	6116	"	Cancelled, act 82 of 1884.
1878	6546	"	" " "
1879	6535	"	" " "
1880	6390	"	Paid.
1881	6066	"	"
1882	6724	"	"
1883	6893	"	"
1884	6875	"	"
1885	7017	"	"
1886	1582	Thos. L. Lallance.....	"
1887	1597	"	"
1888	1583	"	"
1889	5603	"	"
1890	4598	"	"
1891	1411	John H. Lang	"

The foregoing is a correct and true statement as taken from tax records on file in this office.

(Signed) E. JAUNET,
For Comptroller.

State Tax Certificate. Offered in Evidence by Plaintiff. Filed Feb. 4th, '92.

State tax-collector, 4th, 6th, & 7th districts.

Certificate of State Taxes.

NEW ORLEANS, *July* 25, 1891.

66 The research made this day on real estate in square No. 48, Hurst, 6th M. D., bounded by Prytania, Pitt, Elinor, & Nashville Ave., sq. 240 x 300, is as follows:

Year.	*Assessment.*	Assessment.	Tax.	Remarks.
1891	Jno. H. Lang.....	1,500	Paid	
1890	Thos. L. Lallance	800	"	
1889	"	900	"	
1888	"	900	"	
1887	"	900	"	
1886	"	900	"	
1885	R. Costello	900	"	
1884	"	700	"	
1883	"	700	Redeemed Aug. 12, '91..	
1882	"	700	Do. do. ..	
1881	"	500	Do. do. ..	
1880	"	500	Do. do. ..	
1878	"	1,000	P'd as per sale, act 82, '84.	
1877	"	1,000	Do. do.	
1876	"	1,000	Do. do.	
1875	"	.....	Not on rolls.....	
1874	"	.....	Do. do.	
1873	"	.....	Do. do.	
1872	"	.....	Do. do.	
1871	"	.....	Do. do.	
1870	"	.....	Do. do.	
1869	....	.....	No rolls	

The foregoing is a true and correct statement as taken from the tax records on file in this office.

(Signed) W. F. PATTON,
Per A. JONES,
D'y State Tax-collector.

67 *Judgment.*

J. H. LANG
vs.
M. KAUFFMANN *et al.* } No. 34386. Civil District Court, Div. A.

This cause came up for trial on this day—present, J. Zach. Spearing, att'y for plaintiff; Hewes T. Gurley, att'y for defendants—and, after hearing pleadings, evidence, and counsel, the court considering the law and the evidence to be in favor of plaintiff and against defendants, and for the reasons orally assigned—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, John H. Lang, and against defendants, Maurice Kauffmann and W. H. Fitzpatrick, ordering the said defendants, Kauffmann & Fitzpatrick, to comply with their contract entered into on the 24th day of July, 1891, with plaintiff herein, and condemning said defendants to accept the title to the property described as "a certain square of ground in the Sixth district of the city of New Orleans, bounded by Prytania, Pitt & Elinor Sts. & Nashville avenue, designated as square 48, measuring 300 feet front on each Elinor street and Nashville avenue and 240 feet on each Pitt & Prytania streets," and to pay to plaintiff therefor the sum of twenty-five hundred ($2,500) dollars, one-third cash and the balance in one and two years, with eight per cent. interest per annum from July 24th, '91, until paid, with the usual security clauses.

It is further ordered that defendants pay all costs of suit.

Judgment rendered Feb. 4th, 1892.

Signed February 10th, 1892.

(Signed) THOS. C. W. ELLIS, *Judge.*

No. 676. Sale—State of Louisiana, R. Maria Del Castillo to O. Lake.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans. }

68 Be it known that on this fourth day of November, in the year of our Lord the one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth, before me, Joseph Hall Spearing, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Deposito, the duly appointed and authorized deputy of James D. Houston, State tax-collector of the First or Upper district of the city of New Orleans aforesaid, duly commissioned and qualified, who declared that, in pursuance of and by virtue of the power in him vested by the act of the legislature of this State at the session of 1884, being act No. 82, approved July 10th, 1884, and the laws in such case provided, he proceeded at the earliest date to advertise for sale at public auction all property situated in the upper districts of this city, together with all improvements thereon, on which there remained

unpaid taxes due to the State prior to December 31st, 1879; that all such property, with the improvements, &c., was advertised three times in thirty days, in English, in a daily paper published in the city of New Orleans, to wit, The Daily States, the last advertisement occurring on the day such property was advertised to be sold, said property being advertised for sale at the Arcade auction exchange, in this city; that such properties were always advertised in the name of the party in whose name the same was assessed, and, when it was known, in the name of the present owner of same; that said advertisements described or identified said property and designated the time and place of offering; that, after having complied with all the requisites of law, he did offer for sale at public auction, at the time and place designated in such advertisements, to wit, at the Arcade auction exchange, all property so advertised, with all improvements thereon; that among and including in the property so advertised he did advertise according to law, and after a strict compliance with all the requisites of law, the following-described property, with all the improvements thereon, to wit:

69 A certain square of ground in the 6th district of the city of New Orleans, bounded by Prytania, Pitt, and Elinor streets and Nashville avenue, designated as square No. 48; said square No. 48 measures 240 feet front on each of Pitt and Prytania streets by 300 feet front on each of Elinor street & Nashville avenue, being the same property acquired by Rafael Maria Del Castillo from Jos. Flint, as per act before T. O. Stark, N. P., Dec. 23, 1851; registered in C. O., Jefferson transcripts, Book 3, folio 331; for sale at public auction on the 30th day of July, 1885, at the hour of three o'clock p. m., at the St. Charles auction exchange, in this city, on St. Charles street between Common and Gravier streets.

And said tax-collector further declared that under the terms and provisions of said act No. 82 of 1884 the aforesaid described property and improvements were advertised and offered for sale, as herein stated and according to law, to enforce the payment of the unpaid State taxes due on and by said property for the years 1876, 1877, 1878, which amount to the sum of thirty-eight & $\frac{50}{100}$ dollars ($38.50) and which State taxes were due and unpaid at the date of the sale of said property to the purchaser herein named; that said property and improvements were duly and legally assessed in the name of Rafael Maria Del Castillo for the years 1876, 1877, 1878 and as the property of R. M. Del Castillo, his or her estate and heirs, the present owners; that after having complied with all other legal requisites he did expose and offer the said hereinbefore-described property and improvements for sale at public auction, at the said St. Charles auction exchange, on St. Charles street between Gravier and Common streets, in this city, being the place designated in said advertisement, on the 30th day of July, 1885, to enforce the payment of the aforesaid unpaid State taxes (the said property not having been reached on the day the same was advertised to be sold or the list completed on said day, the said sales were continued over,

according to said advertisement, from day to day to said — day of ——, 188–, when said property was reached and offered for sale); that at said place and last date mentioned he did announce in a loud and audible voice the conditions and terms of said sale,
70 when John Z. Spearing, as the attorney-in-fact of Orloff Lake, as per power of attorney before J. F. Spearing, N. pub., 15th day of August, 1885, being the last and highest bidder for said property in the sum of thirty-five & $\frac{00}{100}$ dollars ($35.00), the said property and improvements were adjudicated according to law to the said Spearing, agent, &c., for account of said Lake, for said price and sum of thirty-five & $\frac{00}{100}$ dollars ($35.00), the said price bid for said property being in full and final payment and satisfaction of all the State, city, parish, and municipal taxes due on or by said property prior to December 31st, 1879, together with all the interest, costs, and charges on the same, and for all other taxes, tax liens, and tax privileges which fell due prior to Dec. 31st, 1879, according to the provisions of said act No. 82 of 84; that on said property there were due and unpaid at the time said adjudication and sale the taxes due to the city of New Orleans for the years 1877, 1878, 1879, amounting to the total sum of forty-five & $\frac{00}{100}$ dollars ($45.00).

And now, in pursuance of said adjudication and by virtue of said act No. 82 of 1884 and of the provisions of the laws in such cases provided and for the said consideration of thirty-five & $\frac{00}{100}$ dollars ($35.00), paid by said Spearing, agent, &c., for account of said Lake, the receipt whereof is hereby acknowledged, the said tax-collector, for and in name and on the behalf of the State of Louisiana, does by these presents sell, assign, transfer, and deliver unto the said Lake, through said Spearing, agent, &c., here present and accepting these presents and purchasing for himself, his heirs and assigns, the property hereinbefore described, together with all the improvements thereon and rights thereunto belonging, giving and granting to said purchaser an absolute and irredeemable title to said property, with the right to immediate possession thereof and free of all mortgages, liens, and privileges except for State and city taxes for the year 1880 and subsequent years, the State of Louisiana hereby agreeing to warrant and defend the title of said purchaser, and in case of eviction or failure on the part of the State to give an absolute and perfect title to said property to refund to said purchaser the said amount paid by him to the State for said
71 property. The said purchaser hereby assumes and promises to pay all the State, city, parish, and municipal taxes on said property for the year 1880 and subsequent years, together with all interest, costs, charges, fees, and commissions which may be due and not paid.

By reference to the annexed certificate of the register of conveyances dated October 27, 1885, it does not appear that said Rafael Maria Del Castillo has alienated the aforesaid described property acquired by her as aforesaid on December 23, 1851, registered in C. O., Jeff. Trans., Book 3, folio 331, except sale to State, State tax-collector's sale, tax 1880, Dec. 22, 1883, Book 122, fo. 288.

Sale to State, State tax-collector's sale, tax 1881, June 25, 1884, B'k 122.
Sale to State, State tax-collector's sale, tax 1882, Dec. 13, 1884, B'k 122.
Sale to State, State tax-collector's sale, tax 1883, Dec. 13, 1884, B'k 122.
Folio 315.
" 331.
" 359.

Act of sale. Offered in evidence by defendants and warrantors. Filed M'ch 29th, 1894.

In witness whereof the said Joseph Deposito, tax-collector aforesaid, executes this act of sale in the name and on behalf of the State of Louisiana in favor of the said O. Lake, at my office, in the city of New Orleans, on the date first above written, in the presence of James L. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with said purchaser and me, notary, after reading of the whole.

N. B.—Three words interlined on page two and approved.

(Originally signed) J. D. HOUSTON,
Per J. DEPOSITO, *D'y.*
(Signed) ORLOFF LAKE,
Per JOHN F. SPEARING.
(Signed) J. Z. SPEARING.
(Signed) R. SAUNDERS SCOTT.
(Signed) JOS. H. SPEARING, *Not. Pub.*

Registered in conveyance office, Book 121, folio 899.
New Orleans, Nov. 5, 1885.
(Signed) C. H. D. BREEN, *D'y R. C.*

72 I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.
New Orleans, March 27th, 1894.
(Signed) HENRY L. GARLAND, JR.,
Custodian Notarial Records.

Act of Sale. Offered in Evidence by Defendants and Warrantors. Filed Jan. 4th, 1895.

February 4th, 1885. Tax sale—sundry tax debtors to State of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this fourth day of February, in the year of our Lord *the* one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth,

before me, Joseph Hall Spearing, a notary public in and for the parish and State aforesaid, duly commissioned and qualified, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Deposito, the duly appointed and authorized deputy of James D. Houston, State tax-collector of the Second or Lower district of the city of New Orleans, duly commissioned and qualified, who declared that in pursuance of and by virtue of the power in him vested by the act of the legislature of this State passed at the session of 1882, being act No. 96, p. 119 *et seq.*, of said year 1882, approved July 5, 1882, and of the laws in such cases provided, the tax or assessment rolls of this parish for the year 1882 on real estate were duly made out and completed according to law and filed and recorded in the mortgage office of this parish with the auditor and with him, the said tax-collector, before September 1st of said year 1882; that as soon as the said rolls were thus filed he, the said tax-collector, published a
73 notice once a week for two weeks in a paper published in this parish, setting forth in substance that the taxes assessed on real estate in this parish in the year 1882 are set forth in the said tax-rolls on file in said tax-collector's office and in the said mortgage office; that the said taxes are due and would become delinquent on December 31st, 1882; that the same will draw interest according to law from said December 31st, 1882, until paid or sold in accordance with article 210 of the constitution.

And said tax-collector further declared that he posted a similar notice on the principal door of the room in which the civil district court is held; that he endorsed on the tax-rolls retained in his office and on those deposited in the said mortgage office his certificate to the effect that he had so published and posted said notice.

And the said tax-collector further declared that as soon after the second day of January, 1883, as possible, he addressed and mailed to each tax-payer who had not paid his or her taxes on immovable property for said year 1882 a printed notice setting forth in substance that the State taxes assessed to and against said tax-payer for said year 1882 on immovable property in said parish (stating in said notice the property assessed and the assessed value of said property and the taxes due thereon) were them due, and that the tax-rolls had been filed in the mortgage office; that said taxes must be paid within twenty days after mailing of said notices; that the said taxes will bear interest, according to law, from December 31st, 1882, until paid in full; that after the expiration of twenty days from the date of the mailing of said notices he, the said tax-collector, will advertise for sale each specific piece of immovable property on which said taxes are due in the manner and form provided for judicial sales; that at the principal front door of the civil district court of said parish he will sell, within the legal hours for judicial sales, for cash and without appraisement, such portion of each specific piece of property as the debtor shall point out, and that in the case the tax-payer will not point out sufficient
74 property he, the said tax-collector, will at once sell for cash

and without appraisement the least quantity of said specific property which any bidder will buy for the amount of said taxes, interest, and costs.

And said tax-collector further declared that one of said notices, correct in form and substance, was duly and legally mailed to the delinquent tax-payer hereinafter named.

And said tax-collector further declared that he published once a week for two weeks in a newspaper published in this parish and district one general notice substantially in the foregoing form, addressed to all known and unknown owners of assessed immovable property situated in the said First or Upper district of the city of New Orleans, in which he described the property as described in the said tax-rolls; that he also posted a similar notice on the door of the civil district court, and that he has certified on his tax-rolls that he had so published and posted said notices.

And said tax-collector further declared that at the expiration of twenty days, counting from the day the last of said notices were delivered, mailed, published, or posted, he proceeded to advertise for sale, in the manner provided for judicial sales and in the form prescribed by law, all the immovable property on which said taxes were due, and that after having complied with all the other requisites of law he did advertise, according to law and in the manner provided for judicial sales, in The Daily States, a newspaper published daily in the city of New Orleans in the English language, and also in L'Abeille de la Nouvelle Orleans, a newspaper published daily in said city in the said French language, the properties hereinafter described to enforce the payment of State taxes due on same for the year 188–, the said properties being advertised in the name of the person or persons in which each piece was respectively assessed; that after said publication in such manner and form and for such time as are provided by law for judicial sales in this parish the properties hereinafter described were each separately offered for sale by said tax-collector to enforce the payment of said taxes
75 due on same; that after repeated crying and offering of the same on the 13th day of December, 1884, being the day on which said properties were legally advertised to be sold, and after a strict compliance with all other requirements of law, the same, together with all the improvements thereon, were each separately bid in for and adjudicated to the State by said tax-collector, no one having offered to pay said tax or to bid on said property at all or any portion thereof (nor offered to point out any property of the delinquent tax debtors), which said properties so adjudicated to the State are hereinafter separately described. Immediately following each description is the name of the person or persons in whose name the said property was assessed for said year 188–, together with the total amount for which said property were respectively offered and for which, in default of any bid or any offer to pay, each specific piece of property hereinafter described was respectively and separately adjudicated to the State; all of which said properties hereinafter described are situated in the Sixth district of the city of New Orleans, to wit:

Description No. 89.

A certain square of ground in the square bounded by Prytania, Pitt, and Elinor streets, and Nashville avenue, designated as the square No. 48, measuring 240 feet front by 300 feet in depth.

Which said property was duly and legally assessed for 1882 and advertised in the name of R. Castillo.

Total amount for which above property was adjudicated to State, including taxes of 1882, interest on same to date of adjudication, costs, fees, commissions, advertisements, etc., to wit, thirteen and $\frac{28}{100}$ dollars ($13.28).

And now, in pursuance of the said adjudication and by virtue of the provisions of said act No. 96 of 1882 and the laws for such cases provided, the aforesaid State tax-collector, in the name and on the behalf of the State of Louisiana, does by these presents grant, bargain, sell, assign, transfer, set over, and deliver unto the said State of Louisiana the property hereinbefore described, with all the
76 improvements thereon, and rights, ways, privileges, and appurtenances thereunto belonging or appertaining, with the right to be put into actual possession thereof by order of any court of competent jurisdiction, the said property being redeemable at any time for the space of one year, beginning on the date this act is filed in the conveyance office, by paying the price of adjudication, with twenty per cent. and costs added, in each instance.

In witness whereof the aforesaid tax-collector hereby executes this act of sale, in the name and on the behalf of the State of Louisiana, in favor of said State of Louisiana, at my office, in the said city of New Orleans, on the date first above written, in the presence of James Z. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with me, notary, after reading of the whole.

N. B.—Nine words interlined on page one and seven on last page approved before signing.

(Originally signed) J. DEPOSITO,
D'y State Tax-collector of First or Upper District of City of New Orleans.
J. Z. SPEARING.
R. SAUNDERS SCOTT.
JOS. H. SPEARING, *Not. Pub.*

Registered in conveyance office, Book 122, folio 333, May 2, 1885.

(Signed) JOS. BATT, *R. C.*

I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.

New Orleans, Dec. 19th, '94.

(Signed) HENRY L. GARLAND, JR.,
Costodian of Notarial Records.

Act of Sale. Offered in Evidence by Defendants and Warrantors. Filed Jan. 4th, 1895.

Feb'y 4th, 1885. Tax sale—sundry tax debtors to State of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

77 Be it known that on this fourth day of February, in the year of our Lord *the* one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth, before me, Joseph Hall Spearing, a notary public in and for the parish and State aforesaid, duly commissioned and qualified, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Deposito, the duly appointed and authorized deputy of James D. Houston, State tax-collector of the First or Upper district of the city of New Orleans, duly commissioned and qualified, who declared that in pursuance of and by virtue of the power in him vested by the act of the legislature of this State passed at the session of 1882, being act No. 96, p. 119 *et seq.*, of said year 1882, approved July 5, 1882, and of the laws in such cases provided, the tax or assessment rolls of this parish for the year 1883 on real estate were daily made out and completed according to law and filed and recorded in the mortgage office of this parish with the auditor and with him, the said tax-collector, before September 1st of said year 1883; that as soon as the said rolls were thus filed he, the said tax-collector, published a notice once a week for two weeks in a paper published in this parish setting forth in substance that the taxes assessed on real estate in this parish in the year 1883 are set forth in the said tax-rolls on file in said tax-collector's office and in the said mortgage office; that the said taxes are due and would become delinquent on December 31st, 1883; that the same will draw interest, according to law, from said December 31st, 1883, until paid or sold in accordance with article 210 of the constitution.

And said tax-collector further declared that he posted a similar notice on the principal door of the room in which the civil district court is held; that he endorsed on the tax-rolls retained in his office and on those deposited in the said mortgage office his certificate to the effect that he had so published and posted said notice.

And the said tax-collector further declared that as soon after the second day of January, 1884, as possible he addressed and mailed to each tax-payer who had not paid his or her taxes on immovable property for said year 1883 a printed notice setting forth in
78 substance that the State taxes assessed to and against said tax-payer for said year 1883 on immovable property in said parish (stating in said notice the property assessed and the assessed value of said property and the taxes due thereon) were then due, and that the tax-rolls had been filed in the mortgage office; that said taxes must be paid within twenty days after mailing of said notices; that the said taxes will bear interest, according to law,

from December 31st, 1883, until paid in full; that after the expiration of twenty days from the date of the mailing of said notices he, the said tax collector, will advertise for sale each specific piece of immovable property on which said taxes are due in the manner and form provided for judicial sales; that at the principal front door of the civil district court of said parish he will sell, within the legal hours for judicial sales, for cash and without appraisement, such portion of each specific piece of property as the debtor shall point out, and that in case *of* the tax-payer will not point out sufficient property he, the said tax-collector, will at once sell for cash and without appraisement the least quantity of said specific property which any bidder will buy for the amount of said taxes, interest, and costs.

And said tax-collector further declared that one of said notices, correct in form and substance, was duly and legally mailed to the delinquent tax-payer hereinafter named.

And said tax-collector further declared that he published once a week for two weeks in a newspaper published in this parish and district one general notice substantially in the foregoing form, addressed to all known and unknown owners of assessed immovable property situated in the said First or Upper district of the city of New Orleans, in which he described the property as described in the said tax-rolls; that he also posted a similar notice on the door of the civil district court, and that he has certified on his tax-rolls that he had so published and posted said notices.

And said tax-collector further declared that at the expiration of twenty days, counting from the day the last of said notices
79 were delivered, mailed, published, or posted, he proceeded to advertise for sale, in the manner provided for judicial sales and in the form prescribed by law, all the immovable property on which said taxes were due, and that after having complied with all the other requisites of law he did advertise, according to law and in the manner provided for judicial sales, in The Daily States, a newspaper published daily in the city of New Orleans in the English language, and also in L'Abeille de la Nouvell Orleans, a newspaper published daily in said city in the French language, the properties hereinafter described, to enforce the payment of State taxes due on same for the year 188–, the said properties being advertised in the names of the person or persons in which each piece was respectively assessed; that after said publications in such manner and form and for such time as are provided by law for judicial sales in this parish the properties hereinafter described were each separately offered for sale by said tax-collector to enforce the payment of said taxes due on same; that after repeated crying and offering of the same on the 13th day of December, 1884, being the day on which said properties were legally advertised to be sold, and after a strict compliance with all other requirements of law, the same, together with all the improvements thereon, were each separately bid in for and adjudicated to the State by said tax-collector, no one having offered to pay said tax or to bid on said property at all or any portion thereof (nor offered to point out any property of the delinquent

tax debtors), which said properties so adjudicated to the State are hereinafter separately described. Immediately following each description is the name of the person or persons in whose name the said property was assessed for said year 188–, together with the total amount for which said property were respectively offered and for which, in default of any bid or any offer to pay, each specific piece of property hereinafter described was respectively and separately adjudicated to the State, all of which said properties hereinafter described are situated in the — district of the city of New Orleans, to wit:

80 *Description No.* 94.

A certain square of ground in the square bounded by Prytania, Pitt, Elinor streets and Nashville avenue, designated by the No. 48, measuring 240 feet front by 300 feet in depth.

Which said property was duly and legally assessed for 1883 and advertised in the name of R. Castillo.

Total amount for which above property was adjudicated to State, including taxes of 1883, interest on same to date of adjudication, costs, fees, commission, advertisements, etc., to wit, twelve & $\frac{72}{100}$ dollars ($12.72).

And now, in pursuance of the said adjudication and by virtue of the provisions of said act No. 96 of 1882 and the laws for such cases provided, the aforesaid State tax-collector, in the name and on the behalf of the State of Louisiana, does by these presents grant, bargain, sell, assign, transfer, set over, and deliver unto the said State of Louisiana the property hereinbefore described, with all the improvements thereon and rights, ways, privileges, and appurtenances thereunto belonging or appertaining, with the right to be put into actual possession thereof by order of any court of competent jurisdiction, the said property being redeemable at any time for the space of one year, beginning on the date this act is filed in the conveyance office, by paying the price of adjudication, with twenty per cent. and costs added in each instance.

In witness whereof the aforesaid tax-collector, through Deposito, his duly authorized deputy, hereby executes this act of sale in the name and on the behalf of the State of Louisiana, in favor of said State of Louisiana, at my office, in the said city of New Orleans, on the date first above written, in the presence of James L. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with me, notary, after reading of the whole.

N. B.—Nine words interlined on page one and seven on last page *and* approved before signing.

(Originally signed) J. DEPOSITO,
D'y State Tax-collector of Second or Lower District of City of New Orleans.

81 J. Z. SPEARING.
R. SAUNDERS SCOTT.
JOS. H. SPEARING, *Not. Pub.*

Registered in conveyance office, Book 122, folio 369.
New Orleans, May 2, 1885.
(Signed) JOS. BATT, *R. C.*

I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.
New Orleans, Dec. 19th, '94.
(Signed) HENRY L. GARLAND, JR.,
Custodian of Notarial Records.

Act of Sale. Offered in Evidence by Defendants and Warrantors. Filed Jan. 4th, 1895.

January 17th, 1885. Tax sale—State of Louisiana, sundry tax debtors to State of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this seventeenth day of January, in the year of our Lord the one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth, before me, Joseph Hall Spearing, a notary public in and for the parish and State aforesaid, duly commissioned and qualified, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Deposito, duly appointed and authorized deputy of James D. Houston, State tax-collector of the First or Upper district of the city of New Orleans, duly commissioned and qualified, who declared that in pursuance of and by virtue of the power in him vested by the act of the legislature of this State passed at the session of 1880, being act No. 77, p. 88 *et seq.*, of said year 1880, approved April 9, 1880, and of the laws in such cases provided, the tax — assessment rolls of this parish for the year 188– on real estate were duly made out and completed according to law and filed and recorded in the mortgage office of this parish with the auditor and with him, the said tax-collector, before September 1st of said year 188–; that as soon as the said
82 rolls were thus filed he, the said tax-collector, published a notice once a week for two weeks in a paper published in this parish, setting forth, in substance, that the taxes assessed on real estate in this parish in the year 188– are set forth in the said tax-rolls on file in said tax-collector's office and in the said mortgage office; that the said taxes are due and would become delinquent on December 31st, 188–; that the same will draw interest, according to law, from said December 31st, 188–, until paid or sold in accordance with article 210 of the constitution.

And said tax-collector further declared that he posted a similar notice on the principal door of the room in which the civil district court is held; that he endorsed on the tax-rolls retained in his office and on those deposited in the said mortgage office his certificate to the effect that he had so published and posted said notice.

And the said tax-collector further declared that as soon after the second day of January, 1882, as possible he addressed and mailed to each tax-payer who had not paid his or her taxes on immovable property for said year 1881 a printed notice setting forth, in substance, that the State taxes assessed to and against said tax-payer for said year 1881 on immovable property in said parish (stating in said notice the property assessed and the assessed value of said property and the taxes due thereon) were then due, and that the tax-rolls had been filed in the mortgage office; that said taxes must be paid within twenty days after mailing of said notices; that the said taxes will bear interest, according to law, from December 31st, 1881, until paid in full; that after the expiration of twenty days from the date of the mailing of said notices he, the said tax-collector, will advertise for sale each specific piece of immovable property on which said taxes are due, in the manner and form provided for judicial sales; that at the principal front door of the civil district court of said parish he will sell, within the legal hours for judicial sales, for cash and without appraisement, such portion of each specific piece of property as the debtor shall point out, and that in case the tax-payer will not point out sufficient property he,
83 the said tax-collector, will at once sell for cash and without appraisement the least quantity of said specific property which any bidder will buy for the amount of said taxes, interest, and costs.

And said tax-collector further declared that one of said notices, correct in form and substance, was duly and legally mailed to the delinquent tax-payer hereinafter named.

And said tax-collector further declared that he published once a week for two weeks, in a newspaper published in this parish and district, one general notice, substantially in the foregoing form, addressed to all known and unknown owners of assessed immovable property situated in the said Second or Lower district of the city of New Orleans, in which he described the property as described in the said tax-rolls; that he also posted a similar notice on the door of the civil district court, and that he has certified in his tax-rolls that he had so published and posted said notices.

And said tax-collector further declared that at the expiration of twenty days, counting from the day the last of said notices were delivered, mailed, published, or posted, he proceeded to advertise for sale, in the manner provided for judicial sales and in the form prescribed by law, all the immovable property on which said taxes were due, and that after having complied with all the other requisites of law he did advertise; according to law and in the manner provided for judicial sales, in The Daily States, a newspaper published daily in the city of New Orleans in the English language, and also in L'Abeille de la Nouvelle Orleans, a newspaper published daily in said city in the French language, the properties hereinafter described to enforce the payment of State taxes due on same for the year 188–, the said properties being advertised in the names of the person or persons in which each piece was respectively as-
84 sessed; that after said publications in such manner and

form and for such time — are provided by law for judicial sales in this parish the properties hereinafter described were each separately offered for sale by said tax-collector to enforce the payment of said taxes due on same; that after repeated crying and offering of the same on the 21st day of June, 1884, being the day on which said properties were legally advertised to be sold, and after a strict compliance with all other requirements of law, the same, together with all the improvements thereon, were each separately bid in for and adjudicated to the State by said tax-collector, no one having offered to pay said tax or to bid on said property at all or any portion thereof (nor offered to point out any property of the delinquent tax debtors); which said properties so adjudicated to the State are hereinafter separately described. Immediately following each description is the name of the person or persons in whose name the said property was assessed for said year 1881, together with the total amount for which said property were respectively offered, and for which, in default of any bid or any offer to pay, each specific piece of property hereinafter described was respectively and separately adjudicated to the State; all of which said properties, hereinafter described, are situated in the Sixth district of the city of New Orleans, to wit:

(Description of other properties from 1 to No. 261, inclusive.)

Description No. 262.

A certain square of ground bounded by Prytania, Pitt, Elinor streets and Nashville avenue, designated as square No. 48, measuring 240 feet front by 300 feet in depth.

Which said property was duly and legally assessed for 1881 and advertised in the name of R. Castillo.

Total amount for which above property was adjudicated to State, including taxes of 1881, interest on same to date of adjudication, costs, fees, commission, advertisements, etc., to wit, fifteen $\frac{10}{100}$ dollars ($15.10).

85 (Descriptions of other properties from No. 263 to No. 490, inclusive.)

And now, in pursuance of the said adjudication and by virtue of the provisions of said act No. 77 of 1880 and the laws for such cases provided, the aforesaid James D. Houston, State tax-collector, in the name and on the behalf of the State of Louisiana, does by these presents grant, bargain, sell, assign, transfer, set over, and deliver unto the said State of Louisiana the property hereinbefore described, with all the improvements thereon and rights, ways, privileges, and appurtenances thereunto belonging or appertaining, with the right to be put into actual possession thereof by order of any court of competent jurisdiction, the said property being redeemable at any time for the space of one year, beginning on the date this act is filed in the conveyance office, by paying the price of adjudication, with twenty per cent. and costs added, in each instance.

In witness whereof the said James D. Houston, aforesaid tax-collector, through Joseph Deposito, his duly authorized deputy, hereunto

signs his name and hereby executes this act of sale in the name and on the behalf of the State of Louisiana in favor of said State of Louisiana, at my office, in the said city of New Orleans, on the date first above written, in the presence of James Z. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with me, notary, after reading of the whole.

N. B.—Nine words interlined on page one and seven on last page approved before signing.

(Originally signed) J. DEPOSITO,
D'y State Tax-collector of Second or Lower District of City of New Orleans.
J. Z. SPEARING.
R. SAUNDERS SCOTT.
JOS. H. SPEARING, *Not. Pub.*

Registered in conveyance office, Book 122, folio 325.
New Orleans, May 2, 1885.
(Signed) JOS. BATT, *R. C.*

I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.
New Orleans, Dec. 19, 1894.
(Signed) HENRY L. GARLAND, JR.,
Custodian of Notarial Records.

86 *Act of Sale. Offered in Evidence by Defendants and Warrantors. Filed Jan. 4th, 1895.*

January 10, 1885. Tax sale—State of Louisiana, sundry tax debtors to State of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this tenth day of January, in the year of our Lord *the* one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth, before me, Joseph Hall Spearing, a notary public in and for the parish and State aforesaid, duly commissioned and qualified, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared James D. Houston, State tax-collector of the First or Upper district of the city of New Orleans, duly commissioned and qualified, who declared that in pursuance of and by virtue of the power in him vested by the act of the legislature of this State passed at the session of 1880, being act No. 77, p. 88 *et seq.*, of said year 1880, approved April 9, 1880, and of the laws in such cases provided, the tax or assessment rolls of this parish for the year 1880 on real estate were duly made out and completed according to law and filed and recorded in the mortgage office of this parish, with the

auditor and with him, the said tax-collector, before September 1st of said year 1880; that as soon as the said rolls were thus filed he, the said tax-collector, published a notice once a week for two weeks in a paper published in this parish, setting forth in substance that the taxes assessed on real estate in this parish in the year 1880 are set forth in the said tax-rolls on file in said tax-collector's office and in the said mortgage office; that the said taxes are due and would become delinquent on December 31st, 1880; that the same will draw interest, according to law, from said December 31st, 1881, until paid or sold in accordance with article 210 of the constitution.

87 And said tax-collector further declared that he posted a similar notice on the principal door of the room in which the civil district court is held; that he endorsed on the tax-rolls retained in his office and on those deposited in the said mortgage office his certificate to the effect that he had so published and posted said notice.

And the said tax-collector further declared that as soon after the second day of January, 1881, as possible he addressed and mailed to each tax-payer who had not paid his or her taxes on immovable property for said year 1880 a written or printed notice setting forth in substance that the State and city taxes assessed to and against said tax-payer for said year 1880 on immovable property in said parish (stating in said notice the property assessed and the assessed value of said property and the taxes due thereon) were then due, and that the tax-rolls had been filed in the mortgage office; that said taxes must be paid within twenty days after mailing of said notices; that the said taxes will bear interest according to law from December 31st, 1880, until paid in full; that after the expiration of twenty days from the date of the mailing of said notices he, the said tax-collector, will advertise for sale each specific piece of immovable property on which said taxes are due in the manner and form provided for judicial sales; that at the principal front door of the civil district court of said parish he will sell, within the legal hours for judicial sales, for cash and without appraisement, such portion of each specific piece of property as the debtor shall point out, and that in case the tax-payer will not point out sufficient property he, the said tax-collector, will at once sell, for cash and without appraisement, the least quantity of said specific property which any bidder will buy for the amount of said taxes, interest, and costs.

And said tax-collector *d*urther declared that one of said notices, correct in form and substance, was duly and legally mailed to the delinquent tax-payer hereinafter named.

And said tax-collector further declared that he published once a week for two weeks, in a newspaper published in this
88 parish and district, one general notice, substantially in the foregoing form, addressed to all known and unknown owners of assessed immovable property situated in the said Second or Lower district of the city of New Orleans, in which he described the property as described in the said tax-rolls; that he also posted a similar notice on the door of the civil district court, and that he

has certified on his tax-rolls that he had so published and posted said notices.

And said tax-collector further declared that at the expiration of twenty days, counting from the day the last of said notices were delivered, mailed, published, or posted, he proceeded to advertise for sale, in the manner provided for judicial sales and in the form prescribed by law, all the immovable property on which said taxes were due, and that after having complied with all the other requisites of law he did advertise, according to law and in the manner provided for judicial sales, in The Daily States, a newspaper published daily in the city of New Orleans in the English language, and also in L'Abeille de la Nouvelle Orleans, a newspaper published daily in said city in the French language, the properties hereinafter described to enforce the payment of State taxes due on same for the year 1880, the said properties being advertised in the names of the person or persons in which each piece was respectively assessed; that after said publications in such manner and form and for such time as are provided by law for judicial sales in this parish the properties hereinafter described were each separately offered for sale by said tax-collector to enforce the payment of said taxes due on same; that after repeated crying and offering of the same on the 22nd day of December, 1883, being the day on which said properties were legally advertised to be sold, and after a strict compliance with all other requirements of law, the same, together with all the improvements thereon, were each separately bid in for and adjudicated to the State by said tax-collector, no one having offered to pay said tax or to bid on said property at all or any portion thereof (nor offered to point out any property of the delinquent tax debtors), which said properties so adjudicated to the State are
89 hereinafter separately described. Immediately following each description is the name of the person or persons in whose name the said property was assessed for said year 1880, together with the total amount for which said property were respectively offered, and for which, in default of any bid or any offer to pay, each specific piece of property hereinafter described was respectively and separately adjudicated to the State, all of which said properties hereinafter described are situated in the Sixth district of the city of New Orleans, to wit:

Description of other properties, from No. 1 to No. 16 (inclusive).

No. 17—Description.

A certain square of ground bounded by Prytania, Pitt, Elinor streets and Nashville avenue, designated as square No. 48, in Hurstville; said square No. 48 measures 240 feet by 300 feet.

Which said property was duly and legally assessed for 1880 and advertised in the name of R. Castillo.

Total amount for which above property was adjudicated to State, including taxes of 188–, interest on same to date of adjudication,

costs, fees, commission, advertisements, etc., to wit, fifteen $\frac{15}{100}$ dollars ($15.15).

(Description of other properties, from No. 18 to No. 45, inclusive.)

And now, in pursuance of the said adjudication and by virtue of the provisions of said act No. 96 of 1882 and the laws for such cases provided, the said Jas. D. Houston aforesaid, State tax-collector, in the name and on the behalf of the State of Louisiana, does by these presents grant, bargain, sell, assign, transfer, set over, and deliver unto the said State of Louisiana the property hereinbefore described, with all the improvements thereon, and rights, ways, privileges, and appurtenances thereunto belonging or appertaining, with the right to be put into actual possession thereof by order of any court of competent jurisdiction, the said property being redeemable at any time for the space of one year, beginning on the date this act is filed in the conveyance office, by paying the price of adjudication,
90 with twenty per cent. and costs added in each instance.

In witness whereof the said Jas. D. Houston, aforesaid tax-collector, hereunto signs his name and hereby executes this act of sale in the name and on the behalf of the State of Louisiana, in favor of said State of Louisiana, at my office, in the said city of New Orleans, on the date first above written, in the presence of James Z. Spearing and R. Saunders Scott, competent witnesses, who also sign hereunto with me, notary, after reading of the whole.

(Originally signed) JAMES D. HOUSTON,
State Tax-collector of Second or Lower District of City of New Orleans.
J. Z. SPEARING.
R. SAUNDERS SCOTT.
JOS. HALL SPEARING, *Not. Pub.*

Registered in conveyance office, Book 122, folio 290.

New Orleans, May 2nd, 1885.
(Signed) JOS. BATT, *R. C.*

I, Henry L. Garland, Jr., custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.

New Orleans, Dec. 19th, 1894.

(Signed) HENRY L. GARLAND, JR.,
Custodian of Notarial Records.

91 *Delinquent Tax for the Year* 1872.

Name.	No. of square.	Boundaries.	Assessment.	Amount of tax.	Remarks.
Castillo, Robert.	48	Prytania, Pitt, Elenore, & Nashville Ave.	2,000	43 00	Whole square, Hurst.

Delinquent Tax for the Year 1876.

Name.	Lot.	Sqr.	Boundaries.	Dimensions.	Ass't.	Tax.	Remarks.
Castillo, R..	Whole.	48	Prytania, Pitt, Elenore, & Nashville Ave.	240 x 300	1,000	14 50	Hurst.

Delinquent Tax for the Year 1877.

Name.	Lot.	Sqr.	Boundaries.	Dimensions.	Ass't.	Tax.	Remarks.
Castillo, R..	Whole.	48	Prytania, Pitt, Elenore, & Nashville Ave.	240 x 300	1,000	13 00	

I, the undersigned, recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify the above to be a true and correct copy of the delinquent tax-list for the years 1872, 1876, and 1877, on file in my office.

New Orleans, March first, 1894.

(Signed) GEO. GUINAULT.

Filed Dec. 14th, 1894.

Copy of the delinquent tax-list from the mortgage office, offered in evidence by plaintiffs. Filed Dec. 14th, 1894.

		Names of taxable persons.	Color of taxable persons.	Name of streets.	No. of lots.	Measurement of all lots.	Objects. 1	2	3	4	5	6
							Cash value of lands and lots of ground owned or claimed by any person or corporation, whether patented or not, including buildings and improvements of whatever kind.	Horses, mares, mules, geldings, cattle, sheep, goats, hogs, and all other live animals.	Cars, carriages, and vehicles of all kinds.	Merchandise or stock in trade.	Money loaned on interest, all credits and all bills receivable for money loaned or advanced or for goods sold, and all credits of any and every description.	Money in possession, on deposit, or in hand.
	1	Hurstville.										*Total.*
	2	Square No. 48.....	....	Prytania, Pitt, Elenore, & Nashville Ave.								
	3											
1876	4	R. Castillo.....	....	1 square	.....	240-300	1,000	.....	.....	....	.....	1,000
	5											
1877	6	Do.	....	Do.	1 to 20	" "	1,000	.....	.....	....	.....	1,000
	7											
1878	8	Do.	....	Do.	"	" "	1,000	.....	.....	....	.....	1,000

Filed Dec. 14th, 1894. New Orleans, Febr'y 28th, 1894.
Copy of the assessment-rolls from the office of the tax-collector. Offered in evidence by plaintiffs. Filed Dec. 14th, 1894.
This is to certify that the above is a true copy of the assessment-rolls of record in this office, square No. 48, Hurstville, for the years stated.
(Signed) B. T. WALSHE, *State Tax-collector, 6th Dist., Parish of Orleans.*

1001

93 *Instructions to the Clerk of the Civil District Court for the Parish of Orleans Regarding the Documents Which Shall Constitute the Transcript of Appeal in This Case.*

R. M. DEL CASTILLO
v.
W. L. McCONNICO. } No. 42007. Civil District Court, Division E.

The clerk of the civil district court is hereby instructed to make a second transcript of appeal, containing the following documents of the record, to wit:

1. The petition.
2. The answer of defendant.
3. The judgment appealed from.
4. The motion of appeal.
5. The bond of appeal.
6. The exceptions of defendant.
7. The answer of W. H. Fitzpatrick and call in warranty.

94 8. The answer of H. C. Reese and call in warranty.

9. The exceptions of Lang.
10. The exceptions of Lang, called in warranty.
11. The answer of J. H. Lang to call in warranty by W. H. Fitzpatrick.
12. The answer of J. H. Lang to call in warranty by H. C. Reese.
13. Note of evidence for plaintiff.
14. Note of evidence for defendant & warrantors.
15. Testimony of J. Zach. Spearing.
16. Act of sale, Flint to Castillo.
17. Extract from advertisement.
18. Act of sale, W. H. Fitzpatrick to W. L. McConnico.
19. Act of sale, H. C. Reese to W. L. McConnico.
20. Act of sale, Lang to Fitzpatrick & Reese.
21. Act of sale, State of Louisiana to Orloff Lake.
22. Act of sale, Lake to Lallance.
23. Act of sale, Lallance to J. H. Lang.
24. Copy of advertisement.
25. Extract from the minutes of Apr. 16, '94, and June 11, '94.
26. Record No. 44386, offered in evidence by defendant & warrantors. Several documents (those numbered 21, 22, 23, 27, 28, 29, 30, & 31) comprising part of said record offered in this case are already transcribed. Do not transcribe these documents a second time.
27. Act of sale, R. Maria Del Castillo to O. Lake (using notarial blank).
28. Act of sale, sundry tax debtors to the State of Louisiana (using notarial blank).
29. Act of sale, sundry tax debtors to the State of Louisiana (using notarial blank).

30. Act of sale, sundry tax debtors to the State of Louisiana (using notarial blank).

31. Act of sale, sundry tax debtors to State of Louisiana (using notarial blank).

95 32. Copy of delinquent tax-list (using assessment blank).

33. Copy of assessment-roll (using assessment blank).

You are hereby instructed to use, if found correct, the bound transcript handed you by counsel for appellant of the above documents, with certificate that the same *us* a true copy of the documents & made in accordance with these instructions, the said transcript containing all the documents filed and required to be transcribed according to the rules of the supreme court, except redemption certificate offered but not filed by appellees.

Very respectfully,

JOHN WATT & KERNAN & WALL,
Att'ys for Appellant.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Geo. W. Prados, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing ninety-six pages do contain a true, correct, and complete transcript of the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein R. M. Del Castillo is plaintiff and W. L. McConnico is defendant, instituted in this court and now in the records thereof under the No. 42007, made in compliance with instructions of the plaintiff and appellant, same annexed to transcript.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this 15th day of April, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and 19th year of the Independence of the United States of America.

GEO. W. PRADOS, *Clerk.*

96 *Motion and Order for Extension of Return Day. Entered and Filed March* 27, 1895

Supreme Court of the State of Louisiana.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO } No. —. Supreme Court.

On motion of John Watt and Kernan & Wall, attorneys for plaintiff and appellant, and on suggesting to the court that there has not been sufficient time to complete the transcript of appeal herein on account of the record being somewhat voluminous, and

that an extension of ten days for the completion of the transcript is necessary—

It is ordered that a delay of ten days from the filing hereof be granted for the completion of said transcript.

Affidavit.

Fergus Kernan, being by me duly sworn, says that he is the attorney of appellant, and that all the facts and allegations set forth in the foregoing motion are true and correct.

FERGUS KERNAN.

Sworn to and subscribed before me this 26th day of March, 1895.

ROB'T P. UPTON, *Not. Pub.*

I have no objection to urge to this application.
N. O., March 27, '95.

R. H. LEA,
Att'y for W. L. McConnico.

Motion for Further Extension of Return Day. Filed April 5, 1895, *and Entered April* 8, 1895.

RAFAEL M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. —. Supreme Court.

On motion of John Watt and Kernan & Wall, attorneys for plaintiff and appellant, and on suggesting to the court that the transcript of appeal herein is not yet completed on account of
97 want of sufficient time to complete the same, there being a redemption certificate from the State of Louisiana for the years 1881, 1882, & 1883 missing from the record, said document having been offered by one of the appellees and is missing from the record from no fault of appellant, that a delay of ten days is necessary to complete said transcript—

It is ordered that a delay of ten days be granted for the completion and filing of said transcript.

Affidavit.

Fergus Kernan, being by me duly sworn, says that he is the attorney for appellant, and that all the facts and allegations set forth in the foregoing motion are true and correct.

FERGUS KERNAN.

Sworn to and subscribed to before me this 5th day of April, A. D. 1895.

ROB'T P. UPTON, *Not. Pub.*

Rule to Rescind Orders Extending Return Day of Appeal. Entered and Filed April 13, 1895.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784. Supreme Court of Louisiana.

Upon motion of R. H. Lea, attorney for defendant herein and for W. H. Fitzpatrick, warrantor; of Clegg and Thorpe, attorneys for H. C. Reese, warrantor, and of J. Zach. Spearing, attorney for John H. Lang, warrantor, herein, and upon suggesting to the court—

That heretofore, to wit, on the 27th day of March, 1895, appellant herein applied for and obtained from this honorable court an order extending the time of filing the transcript of appeal herein for ten days from said date.

That upon the fifth day of April, 1896, said appellant presented to this honorable court another motion and application for a further delay of ten days in which to file said transcript of appeal, and the said additional delay was granted.

98 That said extension and delay herein last referred to should not have been granted, and that the order granting same should be set aside, avoided, and annul-ed, for the following reasons, to wit:

1st. That said order extending the time for filing said transcript for ten days from April 5th, 1895, was granted by this honorable court upon a motion and affidavit which was misleading to the court and which did not truly disclose the facts of the case, in this, that said motion and affidavit state that said transcript "is not yet completed on account of want of sufficient time to complete the same," "there being a redemption certificate from the State of Louisiana for the years 1881, 1882, and 1883 missing from the record," while in truth and in fact said transcript of appeal is not completed, because appellant had failed to give and has not yet given instructions to the clerk of the civil district court to prepare a proper transcript, nor is the absence of said certificate of redemption a cause of delay, because the same, though offered, was never produced and filed in the lower court, and its absence from said transcript, through no fault of appellant, could work appellant no harm, and for the further reason that appellant has never called upon appellees or any of them to produce same.

2nd. That, as shown by the sworn certificate of the clerk of the civil district court, hereto annexed as part of this motion, said appellant, previous to his said application for an extension of time on April 5th, 1895, had received a transcript of all the documents and papers in said record which said clerk had been ordered by said appellant to prepare.

3rd. That said certificate shows that counsel for appellant has in his possession and has so had continuously from April 4th, 1895, up to the present time, all the papers and documents in said record, and

that therefore the delay in preparing said transcript is directly attributable to said appellant.

It is ordered by the court that the appellant show cause on Saturday, the 13th day of April, A. D. 1895, at 11 a. m., why the
99 order heretofore granted herein, extending the time for filing the transcript of appeal herein for ten days from April 5th, 1895, should not be rescinded and set aside.

Affidavit of G. W. Prados, Deputy Clerk, Attached to Rule. Filed April 13, 1895.

Filed 13 April, 1895. T. McC. Hyman, clerk.

Supreme Court of La.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO, W. H. FITZPATRICK, Horace C. Reese, and John H. Lang, Called in Warranty.

No. 42007. Civil District Court, Parish of Orleans, Division "E."

I, Geo. W. Pardos, chief deputy clerk of the civil district court for the parish of Orleans, do hereby certify that on the 28th day of March, 1895, the following order to prepare the transcript of appeal in this cause was delivered to me by the attorneys for appellant, to wit:

R. M. DEL CASTILLO
vs.
W. L. MCCOMMICO.
No. 42007.

The clerk will please make a transcript of appeal comprising the following:

1. Petition.
2. Answer of defendant.
3. Judgment appealed from.
4. Motion of appeal.
5. Appeal bond.

& oblige, very respectfully,
(Signed) JOHN WATT &
KERNAN & WALL,
Att'ys for Plaintiff & Appellant.

100 I further certify that a transcript made of the documents named in said order was duly prepared in accordance with said order and certified to by me on the 3rd day of April, 1895, and was delivered to said attorneys.

I further certify that up to the hour of one o'clock p. m. on this day no further or additional instructions were given in regard to the preparation of said transcript of appeal.

I further certify that the record and documents in said cause in this court have been in the hands of the attorneys for plaintiffs and

appellant since April 4th, 1895, and now are, as appears from their motion and receipt therefor, on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-five.

GEO. W. PRADOS,
Deputy Clerk.

Geo. W. Prados, being duly sworn, deposes and says that the statements in the foregoing certificate are true and correct.

GEO. W. PRADOS.

Sworn to and subscribed before me this 11th day of April, 1895.

B. A. DUCOMG,
Deputy Clerk.

Affidavit of R. H. Lea, Attached to Rule. Filed April 13, 1895.

R. M. DEL CASTILLO
vs.
W. L. MCCOMMICO, W. H. FITZPATRICK, HORACE C. REESE, & JOHN H. LANG, Warrantors.

#11784. Supreme Court of Louisiana.

Richard H. Lea, being sworn, deposes and says that shortly after the order of appeal had issued herein he was approached as the attorney for W. L. McConnico, defendant and one of the appellees herein, by Mr. Fergus Kernan, who informed affiant of the fact of the appeal and suggested that as soon as he, Kernan, had had an opportunity to examine the record he would like to come to some understanding with affiant relative to the transcript of appeal, with the view of saving costs. Affiant told Mr. Kernan that he would be pleased to meet him, and that an agreement could probably be made. Nothing further was said at that time. Some days later affiant met Mr. Kernan on Carondelet street, and the matter of the transcript in this case was discussed. Mr. Kernan said that, as there were a number of tax title deeds in the record, he thought it would be well, in order to save costs, to copy one of them and refer to the others, detailing the particulars in which they differed one from the other. He also spoke of the shape in which the copies of the assessment-rolls should go up. Affiant suggested to him that a better plan to take the tax deeds up would be to get Mr. Spearing to let him have a printed form, if he had one; that the blanks could be filled in, and that in that shape, with an exact reproduction of the act before it, the court could more easily appreciate the position of the case. To this view Mr. Kernan assented. Affiant, however, informed him that this arrangement was subject to the approval of Messrs. Thorp and Spearing, who represented the warrantors of defendant. No mention was made of any of the other documents except as to the absence from the record of the certificate of redemption from the

101

State. On March 27th Mr. Kernan called at affiant's office and stated that he intended asking for an extension of time in which to file his transcript, and requested affiant to consent and endorse his consent to same upon the application, he, Kernan, stating that if affiant gave consent there would be no difficulty in getting Messrs. Thorpe and Spearing to do so; whereupon affiant endorsed upon the application for an extension that he had no objection to urge to the application.

On Thursday evening, April 4th, Mr. Kernan brought to affiant the record in this case and a bound volume purporting to be copies of the documents in said record, made partially by the clerk of the court and partially by himself, as he informed affiant, and
102 requested affiant, after examination, to sign an agreement that that volume should constitute the transcript in this case. Affiant, upon taking the volume for the purpose of examination, remarked to Mr. Kernan that the portion of the record copied unofficially was much greater than he had alluded to and included many documents not mentioned in his conversation with affiant, and affiant again informed him that the consent of Messrs. Thorpe and Spearing was indispensable to any consent by affiant, even if the transcript as prepared by him was absolutely correct, as, their clients being the warrantors of affiant's client, affiant could do nothing that even might in any way affect their relative position. Whereupon an appointment was then made to call at the office of Mr. Spearing at 10 o'clock on Friday morning, April 5th, and with him to call on Mr. Thorpe in regard to the matter. On the morning of April 5th, in pursuance of said appointment, affiant, in company with Mr. Kernan, called at the office of Mr. Spearing, and, failing to find him, proceeded to the office of Mr. Thorpe and there with that gentleman discussed the whole subject-matter, when it was determined on the part of defendant and warrantors that they ought not to consent to the transcript going up in the shape in which appellant had prepared it.

New Orleans, April 13th, 1895. R. H. LEA.

Sworn to and subscribed before me this 13th day of April, 1895.
FERGUS KERNAN, *Not. Pub.*

Answer to Rule. *Filed April* 13, 1895.

R. M. CASTILLO
vs.
W. L. MCCONNICO. } No. —. Supreme Court.

Into court now comes R. M. Castillo, appellant herein, through undersigned counsel, and for answer or return to the motion or rule of appellees to rescind the order of Apr. 5th granting an extension of 10 days in which to complete and file the transcript
103 herein respectfully allege the facts and allegations set forth in the annexed affidavit as well as the facts and allegations set forth in the motion filed Apr. 5th as reasons well founded in law why the said motion to rescind should not be granted.

Affidavit of Fergus Kernan, Attached to Answer to Rule. Filed April 13, 1895.

R. M. CASTILLO *vs.* W. L. MCCONNICO. } No. —. Supreme Court.

Affidavit.

Fergus Kernan, one of the counsel for appellant, having been by me first duly sworn, says that it is alleged in the motion for an extension of time filed herein on Apr. 5th that there was want of sufficient time in which to complete and file the transcript; that only one reason out of several why there was not "sufficient time" is specifically stated in said motion, to wit, the failure of appellees to supply part of their documentary evidence; that there were other reasons existing at the time of filing the said motion for extension why there was not "sufficient time" for the completion of said transcript, which reasons are as follows, to wit: At the time the appeal was taken there was what counsel for appellant in good faith believed to be a verbal agreement between counsel for appellant and R. H. Lea, Esq., counsel for W. L. McConnico, appellee, that certain portions of the transcript should be transcribed privately and used on appeal with the same effect as if transcribed by and certified to by the clerk; that in pursuance of this understanding counsel for appellant withdrew the record from the lower court for the purpose of having transcribed and did have transcribed with all possible dispatch said portions of the record; that during the preparation of said transcript counsel for appellant (the return day having arrived) obtained an extension of ten days, which was not opposed by said counsel for appellee; that during the
104 said first extension and while said portions of the record were being transcribed privately counsel for appellant consulted with said counsel for appellee as to the best manner of incorporating certain of the documents in the transcript and received his approval as to a suggested manner of incorporating them; that counsel at the same time notified said counsel for appellee that certain portions of the documentary evidence offered by his side were missing from the record; that if he or the other counsel for appellees would supply said missing documents they would be transcribed in the transcript without any objection on the part of counsel for appellant; that said counsel for appellee promised to notify J. Zach. Spearing, Esq., counsel for J. H. Lang, warrantor, another appellee, to supply said missing documents for incorporation in the transcript; that said missing documents have not been supplied by appellees up to the time of applying for the second extension on Apr. 5th and were at that time missing from the record, from no fault of appellant; that on Apr. 5th counsel for appellant presented the transcript all complete (except that the said missing documents were not transcribed therein, and except also that the clerk had not

certified to the portions transcribed privately), together with the agreement reduced to writing, which counsel for appellant understood in good faith existed in a verbal form; that then said counsel for appellee stated that he could not act independently of Messrs. Clegg & Thorpe & J. Zach. Spearing, counsel for warrantors, the other appellees; that said agreement was then presented to Mr. Thorpe, who refused to sign it; that counsel for appellant then learned for the first time that the agreement as he understood existed and had acted on in good faith could not be made; that the first extension expired on the following day, Saturday, Apr. 6th; that there was not sufficient time to obtain the missing documents, have them transcribed, and also have the clerk certify and verify as correct the portions of the transcript that had been transcribed privately; that accordingly appellant's counsel applied for the extension of Apr. 5th, specifying as the general ground of the motion
that there was "want of sufficient time" to complete the
105 transcript, mentioning specifically only one reason of the
many above set forth; that affiant does not charge appellees' counsel with breach of faith, but does charge that the conduct of appellee's counsel misled him and took him by surprise.

Affiant further deposes (in explanation of why instructions have not been issued to the clerk) that after the granting of the second extension, to wit, on Apr. 7th, he requested Mr. Thorpe, of Messrs. Clegg & Thorpe, to reconsider his refusal to sign the agreement; that he did so far reconsider his refusal as to write his client, at Houston, Texas, for his wishes in the matter; that affiant was notified definitely and finally on Thursday, Apr. 10th, in the afternoon, after the closing of the clerk's office, that the client had been heard from, and that no technical advantage would be waived; that the following day, Friday, Apr. 12th, was a *dies non;* that therefore it has been physically impossible to give the clerk the necessary instructions, but that no right of either appellees or appellant has been lost thereby, because the transcript has been completed and is ready for filing with the exceptions above set forth and can be certified by the clerk, as required by law, and filed before the present extension expires if the necessary missing documents to be supplied by appellees shall have been supplied.

FERGUS KERNAN.

Sworn to and subscribed to before me this 13th day of April, A. D. 1895.

ROB'T P. UPTON, *Not. Pub.*

Rule to Rescind Order Granting Delay to File Transcript of Appeal.

(Extract from minutes.)

NEW ORLEANS, SATURDAY, *April* 13, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

R. M. DEL CASTILLO
v.
106 W. L. McCONNICO, W. H. FITZPATRICK, HORACE C. REESE, and JOHN H. LANG, Warrantors. } No. 11784.

The rule herein taken on the appellant to show cause why the order granted in this cause extending the time for filing the transcript of appeal herein for ten days from the 5th day of April, A. D. 1895, should not be rescinded and set aside came on this day to be heard—present, Richard H. Lea, Thomas H. Thorpe, and J. Zach. Spearing, for plaintiff in rule; Fergus Kernan, for defendant in rule—and the rule having been submitted to the court upon the papers on file, the court took time to consider.

Transcript of appeal. Filed 15 April, 1895.
(Signed) T. McC. HYMAN, *Clerk.*

Opinion of the Court. Filed April 13, 1895.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *April* 22, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor the chief justice pronounced the opinion and judgment of the court in the following case:

R. M. DEL CASTILLO
vs.
W. L. McCONNICO *et al.* } No. 11784.

107 Appeal from the civil district court for the parish of Orleans.

On rule upon plaintiff to show cause why the order of the supreme court extending the time for filing the transcript of appeal for ten days from April 5th, 1895, should not be rescinded.

On the 27th March, 1895, plaintiff and appellant applied for and obtained from this court an order extending the time for filing the transcript of appeal for ten days from that date. On the 5th of April he was granted an additional delay of ten days on a second application.

The parties to the suit are the plaintiff, the defendant, and several warrantors.

The defendant and warrantors united in an application to the court to have the second order rescinded and set aside as having

been granted upon a motion which was misleading and did not truly disclose the facts of the case.

They aver that in said motion it was stated that said transcript was "not yet completed on account of want of sufficient time to complete the same," there "being a redemption certificate from the State of Louisiana for the years 1881, 1882, and 1883 missing from the record," while in truth and in fact said transcript of appeal was not completed, because appellant had failed to give and had not yet given instructions to the clerk of the civil district court to prepare a proper transcript.

That the absence of said certificates of redemption was not a cause of delay, because the same, though offered, was never produced and filed in the lower court, and its absence from the transcript through no fault of appellant could work him no harm, and for the further reason that he had not called upon appellees or any of them to file the same. They annexed to their application a certificate of the clerk of the civil district court to the effect that prior to appellant's second application for an extension he, the appellant, had received a transcript of all the documents and papers in the record, and therefore it is claimed the delay in preparing the transcript was directly attributable to appellant.

108 Annexed to the motion for the rule asked for is a deposition of the attorney for the defendant, stating the situation of affairs from his standpoint as it existed at the time of each application for extension.

The attorney for the plaintiff answered, and annexed to his answer a deposition made by him as to the facts as he understood them.

It appears that after plaintiff had taken an appeal several interviews took place between his attorney and that of defendant with a view of lessening the costs of appeal through the character of the transcript to be made out, it being suggested that as there were a number of tax-title deeds in the record a single one might be copied and the others referred to, simply detailing the particulars of each.

A number of other suggestions were made and an agreement as to what should be done was reached.

Defendant's attorney says he informed opposite counsel that the arrangement made was subject to the approval of the attorney of the warrantor, and that he assented to this. Some time after this plaintiff's counsel informed that of defendant that he intended to file an application for an extension of time and requested him to consent thereto. This consent was given in writing. Defendant's attorney, Mr. Lea, says that when this request was made of him Mr. Kernan (plaintiff's attorney) told him that if he, Lea, consented he would have no trouble in obtaining the approval of Messrs. Clegg & Thorpe, attorneys of the warrantors, and upon this statement he consented.

Subsequently to this Messrs. Kernan and Lea met, the former having with him a book containing copies made out unofficially of various documents from the record, and a discussion took place as to whether what had been done was satisfactory or not. Mr. Lea

informed Mr. Kernan that it was indispensable that the consent of the attorneys of the warrantors should be given to whatever was agreed upon. Thereupon they proceeded to have an interview with these attorneys. The interview terminated with a refusal on
109 their part to consent to the transcript as made out by Mr. Kernan. This interview was on the 5th of April.

On the day after this refusal was given Mr. Kernan made his second application for extension, which was given.

Mr. Kernan states in his affidavit that this application was made by reason of the refusal above stated, and the fact that there was then too little time to have the transcript made out officially, as required by law, by the clerk for filing within the time fixed by the first extension. He says he was under a misapprehension as to the attorneys of the warrantor.

It is obvious that there was a misunderstanding between the attorneys as to the transcript. The appellant is not a defendant, but a plaintiff, and, we have every reason to believe, desired to perfect his appeal. We know of no reason or motive on his part to fight for time. We think he acted in perfect good faith in the matter, even though he may have acted under a misapprehension. The effect of our rescinding the order granted would doubtless lead to the loss of plaintiff's appeal, which we would be very reluctant to have brought about, unless on very clear grounds. The clerk of this court informs us the transcript in this case has been filed.

We do not think the facts call for a re-cission of the order.

It is ordered that the rule taken be discharged at mover's costs.

Judgment on Rule to Rescind.

(Extract from the minutes.)

NEW ORLEANS, MONDAY, *April* 22, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor the chief justice pronounced the opinion and judgment of the court in the following case:

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO *et al.* } No. 11784.

(On rule to rescind the order extending the time for filing the transcript of appeal for ten days from April 5th, 1895.)

110 It is ordered that the rule taken be discharged at mover's cost.

Order Directing Filing of Motion for Certiorari.

(Extract from the minutes.)

NEW ORLEANS, MONDAY, *April* 22, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice: Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784.

On motion of John Watt and Kernan & Wall, attorneys for appellant, and on suggesting to the court that the transcript of appeal in this case is defective in the particulars specified in the written motion presented on the 17th day of April instant, it was ordered by the court that the said motion for certiorari be filed without prejudice.

Motion and Order for Writ of Certiorari. Filed April 22, 1895, *and Entered April* 27, 1895.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784. Supreme Court of Louisiana.

On motion of John Watt, Kernan & Wall, attorneys for appellant, and on suggesting to the court that the transcript filed herein is incomplete and deficient in this, to wit, part of the documentary evidence offered by appellees on the trial in the lower court, to wit, redemption certificates from the State of Louisiana for the years 1881, 1882, and 1883 (see Transcript, page —), are not transcribed in the said transcript; that said documents are material and important for a proper decision of this cause;

On further suggesting that said incompleteness and deficiency in the transcript is not due to any fault of appellant, the said document having been filed by appellees (as admitted in their
111 motion to rescind order granting extension); that, notwithstanding the fact that appellees have not filed said documents, nevertheless they were offered in evidence, used by the trial judge presumably, and form part of the evidence on which the judgment appealed from was rendered, — are absolutely necessary for this court to have before them in order to afford a full and fair review of said judgment;

On further suggesting that the admitted failure of appellees to file said documents, thereby suppressing important evidence, affords proof, as a conclusive presumption of law, that said documents contain evidence unfavorable to their side of this controversy;

On further suggesting that appellant believes and therefore charges

that it is in the power of the clerk of the lower court to procure said documents or copies thereof:

It is ordered that an order in the form of a certiorari issue to the clerk of the civil district court for the parish of Orleans, ordering him to procure, transcribe, and transmit to this court, on or before Monday, April 22nd, 1895, the originals or certified copies of the documents above described, and that he make his return hereto in accordance with the law and the facts.

FERGUS KERNAN,
Att'y for Appellant.

Sworn and subscribed before me this 17th day of April, 1895.
P. ALPH. RABOUIN, *Not. Pub.*

Agreement Between Counsel Regarding Assignment of Case for Trial.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. —. Supreme Court.

It is hereby agreed that this case shall not be fixed for trial during the week beginning May 20th, 1885, but the clerk of the court is requested to fix the same at the subsequent fixing of cases, because Mr. Spearing, att'y for defendant, will be absent from
112 the city during the week beginning May 20th, 1895.

New Orleans, April 25th, 1895.

JOHN WATT &
KERNAN — WALL,
Att'ys for Appellant.
R. H. LEA,
Att'y for Def'd't.
J. ZACH. SPEARING,
Att'y for J. H. Lang.
CLEGG & THORPE,
Att'ys for H. C. Reese.

Return of Clerk to Writ of Certiorari. Filed May 10, 1895.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784. Supreme Court of Louisiana.

Now comes A. V. Flotte, clerk of the civil district court for the parish of Orleans, and makes return of the writ of certiorari served upon him herein, commanding him, said Flotte, as clerk aforesaid, to procure, transcribe, and transmit to the honorable the supreme court of Louisiana a certain "redemption certificate from the State of Louisiana for the years 1881, 1882, and 1883," offered by appellees on the trial in the lower court, as follows, to wit:

First. That the transcript of appeal certified herein contained all

the evidence adduced and copies of all the documents filed upon the trial hereof and conformed strictly to the written instructions of appellant, said instructions being embodied in original in said transcript.

Second. That the redemption certificate or a copy thereof in said writ ordered to be transcribed and transmitted to the honorable the supreme court was not filed in the civil district court on the trial of this cause and constituted no part of the record herein at the time this appeal was taken and the transcript herein was made, and, not being in this record at that time, could not be included in said transcript, and that this respondent is entirely free from fault in the premises.

113 Third. That since the service of said writ appellees have procured and caused to be filed herein, *nunc pro tunc*, as of date of the submission of this cause in the civil district court, a certified copy of the registry of said redemption certificate in the conveyance office of this parish, together with an affidavit showing the loss of the original certificate, which said copy and affidavit, together with the endorsements thereon, respondent has caused to be transcribed, and he herewith transmits the same in obedience to said writ and as part of this return.

Your appearer therefore prays to be exhonerated from all responsibility in the premises, and for all other relief which your honors may deem meet and proper.

Respectfully submitted.

A. V. FLOTTE, *Clerk.*

Copy of Certificate of Redemption Attached to and Filed with Return of Clerk to Writ of Certiorari.

Conveyance office, parish of Orleans; Joseph Hirn, register.

STATE OF LOUISIANA, AUDITOR'S OFFICE.

Certificate of redemption of land sold for taxes and bid in for the State.

I hereby certify that John H. Lang has this day paid into the State treasury the sum of $40.44, being the full amount of taxes, interests, costs, and penalties due for the years 1880, 1881, 1882, 1883 on the following-described property, assessed to R. Castillo, which was returned on the tax-collector's list of lands sold the State from the parish of Orleans filed in the auditor's office:

Square No. 48, Hurstville; bounded by Prytania, Pitt, Elinor, and Nashville avenue, measuring 240′ front by a depth of 300′.

114 And in consequence of the payment of said taxes, interests, costs, penalties, I do hereby certify that the above-described property is redeemed to R. Castillo, against whom or which property said taxes were assessed provided for by section 53 of act No. 85 of 1888.

And the said John H. Lang having redeemed the said above-described property by paying all the taxes, interest, costs, and penalties aforesaid, he, the said John H. Lang, as payor, is legally subrogated to all rights, liens, and mortgages of the State incident to and growing out of said taxes for the years 1880, 1881, 1882, 1883, and its record in the offices required by law, without prejudice to any privileges or mortgages of the State, parish, or municipal corporations for other taxes.

Given under my hand and seal of office this the 12th day of August, A. D. 1891.

(Signed) O. B. STEELE, *Auditor.*
W. T. PATTON, *Tax-col.,*
P'r FITZGERALD, *D'y Col.*

Registered August 19, 1891.
(Signed) A. J. VILLERE, *Register.*

I, the undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the inscription made in this office on August 19, 1891, in Book 139, folio 215.

New Orleans, May 2, 1895.

JOSEPH HIRN,
Register of Conveyances.

NEW ORLEANS, *May* 7, '95.

We agree that this shall be used in lieu of the original document, and that the same may be transmitted to the supreme court by the clerk of the civ. dist. court as part of his return to the writ of certiorari, and that same may be used on appeal in lieu of original.

JNO. WATT,
KERNAN & WALL,
For Appellant.

Affidavit of J. Zach. Spearing, Attached to and Filed with Return of Clerk to Writ of Certiorari.

115 STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared Mr. J. Zach. Spearing, who, being duly sworn, deposes and says that he was a member of the late firm of Jos. H. and J. Zach. Spearing, attorneys-at-law, and affiant is the successor of said firm, practicing in this city; that said firm represented John H. Lang, as his attorneys, during the month of August, 1891; that as such attorneys the said firm, on or about the 12th day of August, 1891, paid the State taxes for the years 1880, 1881, 1882, and 1883 and other years on the following-described property, to wit:

A certain square of ground in the Sixth district of the city of New Orleans, designated by the number 48 of Hurstville, bounded by Prytania, Pitt, and Elenor streets and Nashville avenue; that upon

the payment of said taxes the said firm obtained from the State tax-collector and State auditor for said Lang a certificate of the redemption of said above-described square of ground from the sales thereof made to the State of Louisiana for the taxes due thereon for the said years 1880, 1881, 1882, and 1883, and caused the same to be registered in the conveyance office of this parish; that at the trial of the case entitled R. M. Del Castillo *vs.* W. L. McConnico, in division "E" of the civil district court, affiant, as the counsel for said Lang, one of the warrantors in said case, offered the said redemption certificate in evidence "to be produced;" that since the said offer of said certificate affiant has frequently made diligent search for the same, but without success; that said certificate is now lost or mislaid and cannot be produced.

J. ZACH. SPEARING.

Sworn to and subscribed before me this 7th day of May, 1895, at New Orleans, La.

CHAS. B. UPTON, *Not. Pub.*

We agree that this affidavit may be attached to the return of the clerk on the writ of certiorari as part of said return.

JNO. WATT,
KERNAN & WALL,
For Appellant.

N. O., May 7, '95.

116 *Continuance.*

(Extract from the minutes.)

NEW ORLEANS, TUESDAY, *June* 4, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Francis T. Nicholls, chief justice.

R. M. DEL CASTILLO
v.
W. L. MCCONNICO. } No. 11784.

This cause came on this day to be heard and was argued by counsel. Mr. Isaac D. Wall opened for the plaintiff and appellant, followed by Mr. Richard H. Lea on behalf of the defendant and appellee; and the usual hour for the adjournment of the court having arrived, the court ordered the cause to be continued until tomorrow, Wednesday, the 5th instant, at 11 o'clock a. m., for further argument.

Plea of Res Adjudicata. Filed June 5, 1895.

R. M. DEL CASTILLO
v.
W. L. MCCONNICO. } No. 11784. Supreme Court.

And now comes John H. Lang, one of the warrantors in this case, and, in addition to the pleas and defences made in the lower court, now especially pleads the judgment in his favor and against W. H. Fitzpatrick and M. Kaufman rendered by the civil district court of the parish of Orleans in the suit entitled J. H. Lang *vs.* Kaufman *et al.*, No. 34386 of the docket of said court, as *res adjudicata*, against said Fitzpatrick and against H. C. Reese, the transferee of said M. Kaufman.

Whereupon respondent prays that he be hence dismissed at the costs of plaintiffs in warranty and for all general relief.

J. ZACH. SPEARING,
Att'y for J. H. Lang.

Cause Submitted.

(Extract from the minutes.)

NEW ORLEANS, WEDNESDAY, *June* 5, 1895.

117 The court was duly opened pursuant to adjournment.
Present: Their honors Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Francis T. Nicholls, chief justice.

R. M. DEL CASTILLO
v.
W. L. MCCONNICO. } No. 11784.

This cause, continued from yesterday, Tuesday, the 4th day of June, A. D. 1895, came on this day further to be heard and was argued by counsel. Mr. Richard H. Lea resumed his argument, interrupted by the adjournment of the court last evening, on behalf of the defendant and appellee, and Mr. Wall closed the argument; and the cause having been submitted upon the briefs and papers now on file, the court took time to consider.

Opinion of the Court. Filed June 17, 1895.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *June* 17*th*, 1895.

The court was duly opened pursuant to adjournment.
Present: Their honors Lynn B. Watkins, Samuel D. McEnery,

Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Miller pronounced the opinion and judgment of the court in the following case:

RAFAEL MARIA DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784.

Appeal from the civil district court for the parish of Orleans.

The plaintiff brings this petitory action to recover a square
118 of ground in the 6th district of this city acquired by him in 1851. The defendant and his warrantors claim under an adjudication for payment of State taxes accrued prior to 1879, made to Orloff Lake in 1885, and based on the act of the legislature No. 82 of 1884, directing sales for taxes. The defences to plaintiff's suit are the exceptions of no cause of action, prescription of two, three, and five years, of *res judicata* based on a judgment of the district court condemning one of the warrantors to accept the tax title; the defence is also urged that the property was subsequently to the tax sale adjudicated to the State for the taxes of 1880 to 1882, assessed in the name of R. Castillo, and, finally, the defence relies on the tax sale of 1885, under act No. 82 of 1884, as vesting complete title in Lake and those claiming under him. From the judgment of the lower court, in favor of the defendant, this appeal is prosecuted by plaintiff.

It appears that from 1876 to 1878 the property was assessed as that of R. Castillo; that the property was never forfeited or adjudicated to the State for these taxes, the only adjudication to the State for the taxes of 1880 to 1883 being assessed to R. Costello; the adjudication to Lake in 1885 under act of 1884 was followed by the deed authorized by that act, and it further appears that one of Lake's vendees has paid all the taxes accrued since 1879, manifestly intended to complete the tax title.

The vigorous argument in this court on behalf of the plaintiff mainly rests on his contention that the act No. 82 of 1884 must be restricted to the sale of property forfeited to the State or to which the State had a title at the date of the constitution of 1879, it being conceded in this case there was no such forfeiture or title. The provision in the constitution of 1879 for the relief of delinquent taxpayers might well as of first impression suggest its applicability only to sales of property forfeited to the State or belonging to it when the constitution was adopted. This impression, in our view, must yield to a more careful reading of the instrument. In the last portions of the ordinance there is, in our view, a distinct
119 reference to the property on which taxes are due, levied prior to 1879, followed by the direction that all such property shall be sold in the manner to be provided by law. Such property embraces not only that forfeited or belonging to the State, mentioned in the beginning of the ordinance (the fifth line), but also property

on which taxes were due prior to 1879 and not redeemed within the period given by the ordinance. Indeed, the interpretation we announce cannot be deemed open. In the matter of Orlof- Lake, 40th Ann., 142; *In re* Douglas, 41st Ann., 765, and other decisions of this court.

The acts No. 107 of 1880, 98 of 1882, and No. 84 of 1884 followed this ordinance. The first two acts were deemed not sufficiently comprehensive, but in the last act the sale of all property was authorized on which taxes were due the State prior to 1879, as well as property forfeited. See the act, S. 1, 3rd. Under the act the sale was to be made after advertisement, giving the name of the party in whose name the property was assessed or the name of the present owner. The deed under the act was to be conclusive evidence, among other things, that the property was assessed according to law. S. 3rd. Under this act and deed issued under it the defendant holds title. It is urged on behalf of plaintiff that the property was not properly assessed for the taxes prior to 1879, because the assessment was in the name of R. Castillo instead of Rafael Maria Del Castillo. We are relieved of the necessity of passing on the question of the sufficiency of this assessment. The act of 1884 makes the deed conclusive of the sufficiency of the assessment of the property sold under it. The question of the competency of this legislation in this respect has been before this court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this court. To those decisions we must adhere and hold the act precludes the enquiry. In the matter of Orloff Lake, 40th Ann., 142; *In re* Douglas, 41st Ann., 765; Breaux *vs.* Negrotto, Jr., 43rd Ann., 430 *et seq.*

It is urged on us that the property not forfeited to the State prior to 1879 could not be sold without the notice specified in article 210 of the constitution. That article applies manifestly to sales for taxes levied since 1879. Sales of property for taxes prior to 1879 are governed by the ordinance for the relief of delinquent tax-payers and by the act of 1884 prescribing newspaper notice. In this case the advertisement gave the full name of plaintiff, adding her estate or heirs, and in our view the advertisement conformed to the requirement of the act.

In all aspects of the case we think the defendant's title is protected by a line of decisions that no court should deem itself at liberty to overthrow, especially as they are based on that provision of our organic law dealing with the subject of long-deferred taxes left still unpaid after the liberal grace extended the owners by the ordinance.

It is therefore ordered, adjudged, and decreed that the judgment of the lower court be affirmed with costs.

Final Judgment.

(Extract from the minutes.)

NEW ORLEANS, MONDAY, *June* 17, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Miller pronounced the opinion and judgment of the court in the following case:

RAFAEL MARIA DEL CASTILLO
v.
W. L. MCCONNICO. } No. 11784.

On appeal from the civil district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment of the lower court be affirmed with costs.

Petition for Rehearing. Filed June 22, 1895.

Supreme Court of Louisiana.

121 RAFAEL MARIA DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784.

The petition of Rafael Maria Del Castillo, plaintiffs and appellant herein, for a rehearing respectfully represents—

That the decision of this court affirming the decision of the lower court so construes act No. 82 of the session for the year 1884 of the General Assembly of this State as to make said act violative of the fifth amendment of the Constitution of the United States in the following particulars:

First. Said act purports to make the deed of the tax-collector for the sale of property made under its provisions conclusive evidence that the assessment was made according to law; that the assessment stands in lieu of a judgment; that the assessments for which petitioner's property was sold in this case were absolutely null and void; that to make the tax-collector's deed conclusive evidence of the correctness of the assessments is tantamount to validating a judicial sale without a judgment or its equivalent and would deprive petitioner of his property without due process of law, contrary to the provision of the Constitution of the United States above referred to.

Second. Said act No. 82 of 1884 provides that the said tax-collector's deed shall be conclusive evidence that property sold under its provisions was advertised according to law, whereas in fact the advertisement under which petitioner's property was sold contains

all the vices, defects, and misdescriptions found in the assessments, and is therefore radically defective, invalid, null, and void; that such provision of said act No. 82 of 1884, applied to the acts of the tax-collector in making the sale of petitioner's property complained of in his original petition, would shut him off from the opportunity of being heard, would permit the sale of his property without any previous advertisement, as required by law, and as such a
122 proceeding, culminating in the sale complained of, was a deprivation of petitioner's property without due process of law.

Third. That said act No. 82 of 1884 also provides that the tax-collector's deed of all property sold by virtue of its provisions shall be conclusive evidence that the owner whose property was divested was notified according to law of the intended sale of his property for taxes; that in fact no notice of any kind was given petitioner of the intended sale of his property complained of in this suit; that the said provision of said act 82 of 1884 validates a sale for taxes made without any notice to the owner at all; that thereby the owner is deprived of his property without any opportunity of being heard—without any citation, summons, or other process in the nature of a summons—in other words, without due process of law; that the said provision of said act 82 of 1884 is repugnant to and violative of the said fifth amendment to the Constitution of the United States, which provides that no one shall be deprived of life, liberty, or property without due process of law.

Fourth. That said act No. 82 of 1884 also provides for the sale of property belonging to the citizen and also for the sale of property of the State, embraces more than one object, is repugnant to art. 29 of the State constitution, is invalid, null, and void, and to sustain a pretended sale under it of plaintiff's property would deprive him of it without any process of law, in violation of the said fifth amendment of the Constitution of the United States.

That the decision of this court is in favor of the validity of said act 82 of 1884 on all its provisions above set forth, which petitioner hereby charges are repugnant to and in conflict with said fifth amendment of the Constitution of the United States.

That the ordinance for the relief of delinquent tax-payers of the constitution of 1879, if its object be to enable the legislature to provide a mode of disposing of the citizen's property delinquent for taxes by an unimpeachable title, in a manner contrary to the provisions of the statutes under which the delinquent taxes were assessed, is repugnant to the said fifth amendment of the Constitution of the United States, and that the decision of your honors in
123 this cause is in favor of the validity of the said ordinance.

Wherefore petitioner prays this honorable court that it will be pleased to grant a rehearing of this cause.

JNO. WATT,
KERNAN & WALL, *Att'ys.*

Rehearing Refused.

(Extract from the minutes.)

NEW ORLEANS, THURSDAY, *June* 27, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Francis T. Nicholls, chief justice.

By the court:

R. M. DEL CASTILLO
v.
W. L. MCCONNICO. } No. 11784.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error and Order. Filed June 29, 1895.

Supreme Court of Louisiana.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. —.

The petition of plaintiff and appellant herein respectfully represents—

That in this cause there is drawn in question the validity of a statute and an authority exercised under this State on the ground of its being repugnant to the Constitution of the United States, and that the decision of this court, being the highest court of law
124 or equity of this State, is in favor of its validity; also that there is drawn in question the construction of a clause of the Constitution of the United States, and the decision of this court is against the right specially claimed under such clause of the Constitution.

Wherefore petitioner prays that this court may be pleased to grant him a writ of error, with supersedeas, to the Supreme Court of the United States on his executing a bond in such sum as the court may fix, returnable to said court, at Washington, on the — of ——, according to law.

JOHN WATT &
KERNAN & WALL, *Att'ys.*

Order.

Let a writ of error issue as herein prayed for, returnable according to law, upon the plaintiff in error furnishing bond conditioned according to law, if without supersedeas, in the sum of not less than

five hundred dollars, and if with supersedeas in the sum of not less than five thousand dollars.

Done and signed officially in chambers this 29th of June, 1895, at New Orleans, La.

L. B. WATKINS,
Presiding Justice.

Petition for Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said suit, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rafael Maria Del Castillo, as plaintiff and appellant, and Walter L. McConnico, as defendant and appellee; also John H. Lang, Horace C.
125 Reese, and William H. Fitzpatrick, warrantors and also appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Rafael Maria Del Castillo, plaintiff and appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
L. B. WATKINS,
Presiding Justice of the Supreme Court of Louisiana.

126 Endorsed: No. 11784. R. M. Del Castillo, plaintiff in error, *versus* W. L. McConnico, defendant in error. Writ of error.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, *copy* in pursuance of the statute in such cases made and provided, this first day of July, one thousand eight hundred and ninety-five.

JNO. WATT AND
KERNAN & WALL,
Attorney- of Plaintiff in Error.

Filed 1 July, 1895.

T. McC. HYMAN, *Clerk.*

Bond for Writ of Error. Filed July 1, 1895.

Know all men by these presents that we, Rafael Maria Del Castillo, as principal, and John Watt, as sure*ties*, are held and firmly bound unto Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick in the full and just sum of five hundred dollars, $500.00, to be paid to the said Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a hearing and decision in the supreme court of Louisiana, in a suit depending in said court between Rafael Maria Del Castillo, as plaintiff and appellant, and Walter L. McConnico, defendant, appellee, and John H. Lang, Horace C. Reese, and William H. Fitzpatrick, warrantors, also appellees, a judg-
127 ment was rendered against the said Rafael Maria Del Castillo, and the said Rafael Maria Del Castillo having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick, citing and admonishing them to be and appear before the United States Supreme Court to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Rafael Maria Del Castillo shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

RAFAEL MARIA DEL CASTILLO, [SEAL.]
Per JNO. WATT, *Att'y.* [SEAL.]
JNO. WATT. [SEAL.]

Sealed and delivered in presence of—
H. J. CARTER.

Approved by—
L. B. WATKINS,
Presiding Justice of the Supreme Court of Louisiana.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } ss:

Personally appeared John Watt, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, Louisiana, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

JNO. WATT.

Subscribed and sworn before me this 1st day of July, 1895.

H. J. CARTER,
U. S. Commissioner.

128 Endorsed: No. 11784. Supreme court of La. R. M. Del Castillo, plaintiff in error, *vs.* W. L. McConnico, defendant in error. Bond. Filed July 1, 1895. T. McC. Hyman, clerk.

Assignment of Errors. Filed July 5, 1895.

In the Supreme Court of Louisiana.

RAFAEL MARIA DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784.

Assignment of errors.

Now into court — Rafael Maria Del Castillo, plaintiff and plaintiff in error, by Jno. Watt and Kernan & Wall, his attorneys, and says—

That in the record, proceedings, and decree in the above-entitled matter there is manifest error, in this, to wit:

1. That the court erred in maintaining the constitutionality of that part of sec. 3 of act No. 82 of 1884 of the General Assembly of Louisiana which makes the tax-collector's deed under that act conclusive evidence of a valid assessment of the property sold under that act; that the assessment stands in lieu of a judgment; that the assessments for which petitioner's property was sold in this case were alleged to be absolutely null and void; that making the tax-collector's deed conclusive evidence of the correctness of the assessments is tantamount to validating a judicial sale without a judgment or its equivalent and would deprive said Rafael Maria Del Castillo of his property without giving him an opportunity to be heard, without due process of law, contrary to the fifth and
129 fourteenth amendments to the Constitution of the United States.

2. That the court erred in maintaining the constitutionality of that part of sec. 3 of said act 82 of 1884 which makes the tax-collector's deed under said act conclusive evidence that the property sold under its provisions was advertised, according to law, and that all the prerequisites to a valid sale by the tax-collector, from the

assessment up to and including the registry of the deed in the conveyance office, were observed; that such provision of act No. 82 of 1884 applied to the acts of the tax-collector in making the sale of said Rafael Maria Del Castillo's property complained of in his original petition would shut him off from the opportunity of being heard, would permit the sale of his property without any previous advertisement as required by law, and such a proceeding culminating in the sale complained of in the original petition was a deprivation of said Rafael Maria Del Castillo's property without due process of law.

3. That the court erred in maintaining the constitutionality of that part of sec. 3 of said act 82 of 1884 which makes the tax-collector's deed conclusive evidence that the owner divested was notified, according to law, of the intended sale of his property for taxes; that in fact no notice of any kind was given or pretended to have been given to said Rafael Maria Del Castillo of the intended sale of his property complained of in this suit; that the said provision of said act 82 of 1884 validates a sale for taxes made without any notice to the owner at all; that thereby the owner is deprived of his property without any opportunity of being heard, without any summons or other process in the nature of a summons—in other words, without due process of law.

4. That the court erred in maintaining the constitutionality of said act 82 of 1884, because said act is manifestly unconstitutional, null, void, and of no effect, in that it provides for the sale of property belonging to the State of Louisiana, and also of property
130 belonging to the citizen in the enforced collection of taxes, embraces more than one object, is violative of art. 29 of the State constitution, and to sustain a pretended sale of said Rafael Maria Del Castillo's property under said act would deprive him of it without due process of law.

5. That the court erred in maintaining the constitutionality of said act 82 of 1884, because said act pretends to provide for the sale of the citizen's property simply delinquent for taxes for what it will bring to the highest bidder, and that the whole amount realized at such sale, although it may be greatly in excess of the taxes, interest, penalties, and costs due, shall be paid into the State treasury without any right in the delinquent tax-payer to claim said surplus; that to sustain the constitutionality of such act would be tantamount to providing for the taking of private property for public use without just compensation.

6. That the court erred in maintaining the constitutionality and validity of the ordinance for the relief of delinquent tax-payers of the constitution of the State of Louisiana, if its object be to enable the legislature to provide a mode of disposing of the citizen's property delinquent for taxes by an unimpeachable title, in a manner contrary to the provisions of the statutes under which the delinquent taxes were assessed; that such legislation would shut the delinquent tax-payer off from being heard and would deprive him of his property without due process of law, and to place such a construction on the said ordinance of the said constitution and main-

tain its constitutionality would deprive said Rafael Maria Del Castillo of his property without due process of law.

7. That the decision of the said supreme court of Louisiana is in favor of the validity of said act 82 of 1884 in all its provisions above set forth and the constitutionality and validity of the said ordinance of the State constitution under the construction adopted in said decision, which plaintiff and plaintiff in error hereby alleges
131 are repugnant to and in conflict with said fifth amendment of the Constitution of the United States.

Wherefore the said Rafael Maria Del Castillo, plaintiff and plaintiff in error, prays that the judgment or decree of the said supreme court of Louisiana rendered in this cause be annulled and avoided and reversed with costs, and for costs and general relief.

JNO. WATT AND
KERNAN & WALL,
Att'ys for Plaintiff and Plaintiff in Error.

Certificate of Clerk of the Supreme Court.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing 130 pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein Rafael Maria Del Castillo was plaintiff and Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 11784.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at the city of New Orleans, this 20th day of July, anno Domini one thousand eight hundred and ninety-five, and in the one hundred and twentieth year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

Certificate of the Presiding Justice.

UNITED STATES OF AMERICA, }
132 *State of Louisiana.* }

Supreme Court of the State of Louisiana.

I, Lynn Boyd Watkins, presiding justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of

him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 20th day of July, anno Domini one thousand eight hundred and ninety-five, and in the one hundred and twentieth year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

L. B. WATKINS,
Presiding Justice.

133 *Petition for Writ of Error and Order. Filed June 29, 1895.*

Supreme Court of Louisiana.

R. M. DEL CASTILLO
vs.
W. L. MCCONNICO. } No. —.

The petition of plaintiff and appellant herein respectfully represents—

That in this cause there is drawn in question the validity of a statute and an authority exercised under this State on the ground of its being repugnant to the Constitution of the United States, and that the decision of this court, being the highest court of law or equity of this State, is in favor of its validity; also that there is drawn in question the construction of a clause of the Constitution of the United States, and the decision of this court is against the right specially claimed under such clause of the Constitution.

Wherefore petitioner prays that this court may be pleased to grant him a writ of error with supersedeas to the Supreme Court of the United States, on his executing a bond in such sum as the court may fix, returnable to said court, at Washington, on the — of ——, according to law.

JOHN WATT &
KERNAN & WALL, *Att'ys.*

Order.

Let a writ of error issue, as herein prayed for, returnable according to law upon the plaintiff in error furnishing bond conditioned according to law, if without supersedeas, in the sum of not less than five hundred dollars, and if with supersedeas in the sum of not less than five thousand dollars.

Done & signed officially in chambers this 29th of June, 1895, at New Orleans, La.

L. B. WATKINS,
Presiding Justice.

134 [Endorsed:] No. 11784. Supreme court. R. M. Del Castillo *vs.* W. L. McConnico. Petition for writ of error with

supersedeas to Supreme Court of the U. S. Fergus Kernan, Wm. Winans Wall. John Watt & Kernan & Wall, Morris building, New Orleans, La., attorneys for plaintiff & appellant. Filed June 29, 1895. T. McC. Hyman, clerk.

135 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said suit, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rafael Maria Del Castillo, as plaintiff and appellant, and Walter L. McConnico, as defendant and appellee; also John H. Lang, Horace C. Reese, and William H. Fitzpatrick, warrantors, also appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity,

136 or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Rafael Maria Del Castillo, plaintiff and appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
L. B. WATKINS,
Presiding Justice of the Supreme Court of Louisiana.

137 [Endorsed:] No. 11784. Supreme court La. Rafael Maria del Castillo, plaintiff in error, *versus* W. L. McConnico *et als.*, defendants in error. Writ of error. Filed July 1, 1895. T. McC. Hyman, clerk.

138 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to W. L. McConnico, residing in the city of New Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Rafael Maria del Castillo is plaintiff in error and Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, Rafael Maria del Castillo, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

L. B. WATKINS,
Presiding Justice of the Supreme Court of the State of Louisiana.

139 [Endorsed:] W. L. McConnico. Constantinople. R. Supreme court of the State of Louisiana. No. 11784. Camp, Magazine. Rafael Maria del Castillo *vs.* W. L. McConnico *et als.* Susan Giles, 16th. Citation. Filed 19 July, 1895. T. McC. Hyman, clerk. Chestnut bet. Austerlitz & Constantinople.

Sheriff's Return.

Received Thursday, July 11, 1895, and on the 16th day of July, 1895, I served a copy of the within citation on W. L. McConnico, defendant herein, by leaving same at his domicile, on Constantinople St. bet. Camp. & Magazine Sts., in the hands of Susan Giles, a person apparently over the age of 14 years, living and residing in said domicile, whose name and other facts connected with this service I learned by interrogating said Susan Giles, said W. L. McConnico, defendant herein, being absent from the city at the time of said service.

Returned same day.

CH'S FROMPS,
Deputy Sheriff, Parish of Orleans, State of Louisiana.

Sheriff's fee, 50c.

Sworn to and subscribed before me this 18th day of July, 1895.

{ Seal of P. Alphonse Rabouin, Notary Public, Parish of Orleans, State of La. }

P. ALPH. RABOUIN, *Not. Pub.*

140 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John H. Lang, residing at Pass Christian, State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Rafael Maria del Castillo is plaintiff in error and Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, Rafael Maria del Castillo, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day July, in the year of our Lord one thousand eight hundred and ninety-five.

L. B. WATKINS,
Presiding Justice of the Supreme Court, of the State of Louisiana.

141 [Endorsed:] R. Jno. H. Lang. J. Z. Spearing, att'y of record, P., 15. Supreme court of the State of Louisiana. No. 11784. Rafael Maria Del Castillo *vs.* W. L. McConnico *et als.* Citation. Filed July 19, 1895. T. McC. Hyman, clerk.

Sheriff's Return.

Received Thursday, Jul- 11, 1895, and on the 15th day of July, 1895, I served a copy of the within citation on John H. Lang, herein named, by personal service on J. Zach. Spearing, attorney of record.

Returned same day.

JAMES DUIGNAN,
D'y Sh'ff, Parish of Orleans, La.

Sh'ff fee, 50c.

Sworn to and subscribed before me this 18th day of July, 1895.

{ Seal of P. Alphonse Rabouin, Notary Public, Parish of Orleans, State of La. }

P. ALPH. RABOUIN, *Not. Pub.*

142 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Horace C. Reese, residing at Houston, State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Rafael Maria del Castillo is plaintiff in error and Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, Rafael Maria del Castillo, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

L. B. WATKINS,
Presiding Justice of the Supreme Court of the State of Louisiana.

143 [Endorsed:] Horace C. Reese. Serve on Clegg & Thorpe as att'y- of record. John Clegg. R. Supreme court of the State of Louisiana. No. 11784. 12. Rafael Maria del Castillo *vs.* W. L. McConnico *et als.* Citation. Filed 19 July, 1895. T. McC. Hyman, clerk.

Sheriff's Return.

Received Thursday, Jul- 11, 1895, and on the 13th day of July, 1895, I served a copy of the within citation on Horace C. Reese, herein named, by personal service on John Clegg, of the law firm of Clegg and Thorpe, attorneys of record.

Returned same day.

JAMES DUIGNAN,
D'y Sh'ff Parish of Orleans, La.

Sh'ff fee, 50c.

Sworn to and subscribed before me this 18th day of July, 1895.

{Seal of P. Alphonse Rabouin, Notary Public, Parish of Orleans, State of La.}

P. ALPH. RABOUIN, *Not. Pub.*

144 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to William H. Fitzpatrick, residing at New Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Rafael Maria del Castillo is plaintiff in error and Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, Rafael Maria del Castillo, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-five.

L. B. WATKINS,
Presiding Justice of the Supreme Court of the State of Louisiana.

145 [Endorsed:] Serve on Wm. H. Fitzpatrick, P., 15, '95. R. Supreme court of the State of Louisiana. No. 11784. Rafael Maria Del Castillo *vs.* W. L. McConnico *et al.* Citation. Filed 19 July, 1895. T. McC. Hyman, clerk.

Sheriff's Return.

Received Thursday, Jul- 11, 1895, and on the 15th day of July, 1895, I served a copy of the within citation personally on Wm. H. Fitzpatrick, herein named.

Returned same day.

JAMES DUIGNAN,
D'y Sh'ff, Parish of Orleans, La.

Sh'ff fee, 50c.

Sworn to and subscribed before me this 18th day of July, 1895.

{Seal of P. Alphonse Rabouin, Notary Public, Parish of Orleans, State of La.}

P. ALPH. RABOUIN, *Not. Pub.*

146 *Assignment of Errors. Filed July* 5, 1895.

In the Supreme Court of Louisiana.

RAFAEL MARIA DEL CASTILLO
vs.
W. L. MCCONNICO. } No. 11784.

Assignment of errors.

Now, into court — Rafael Maria Del Castillo, plaintiff and plaintiff in error, by Jno. Watt and Kernan & Wall, his attorneys, and says— That in the record, proceedings, and decree in the above-entitled matter there is manifest error, in this, to wit:

1. That the court erred in maintaining the constitutionality of that part of sec. 3 of act No. 82 of 1884 of the General Assembly of Louisiana which makes the tax-collector's deed under that act conclusive evidence of a valid assessment of the property sold under that act; that the assessment stands in lieu of a judgment; that the assessments for which petitioner's property was sold in this case were alleged to be absolutely null and void; that making the tax-collector's deed conclusive evidence of the correctness of the assessments is tantamount to validating a judicial sale without a judgment or its equivalent and would deprive said Rafael Maria Del Castillo of his property without giving him an opportunity to be heard, without due process of law, contrary to the fifth and fourteenth amendments to the Constitution of the United States.

2. That the court erred in maintaining the constitutionality of that part of sec. 3 of said act 82 of 1884 which makes the tax-collector's deed under said act conclusive evidence that the
147 property sold under its provisions was advertised according to law, and that all the prerequisites to a valid sale by the tax-collector from the assessment up to and including the registry of the deed in the conveyance office were observed; that such provision of act No. 82 of 1884 applied to the acts of the tax-collector in making the sale of said Rafael Maria Del Castillo's property complained of in his original petition would shut him off from the opportunity of being heard, would permit the sale of his property without any previous advertisement, as required by law, and such a proceeding, culminating in the sale complained of in the original petition, was a deprivation of said Rafael Maria Del Castillo's property without due process of law.

3. That the court erred in maintaining the constitutionality of that part of sec. 3 of said act 82 of 1884 which makes the tax-collector's deed conclusive evidence that the owner divested was notified according to law of the intended sale of his property for taxes; that in fact no notice of any kind was given or pretended to have been given to said Rafael Maria Del Castillo of the intended sale of his property complained of in this suit; that the said provision of said act 82 of 1884 validates a sale for taxes made without any

notice to the owner at all; that thereby the owner is deprived of his property without any opportunity of being heard, without any summons or other process in the nature of a summons; in other words, without due process of law.

4. That the court erred in maintaining the constitutionality of said act 82 of 1884 because said act is manifestly unconsti-
148 tutional, null, void, and of no effect, in that it provides for the sale of property belonging to the State of Louisiana, and also of property belonging to the citizen in the enforced collection of taxes, embraces more than one object, is violative of art. 29 of the State constitution, and to sustain a pretended sale of said Rafael Maria Del Castillo's property under said act would deprive him of it without due process of law.

5. That the court erred in maintaining the constitutionality of said act 82 of 1884 because said act pretends to provide for the sale of the citizen's property simply delinquent for taxes for what it will bring to the highest bidder, and that the whole amount realized at such sale, although it may be greatly in excess of the taxes, interest, penalties, and costs due, shall be paid into the State treasury without any right in the delinquent tax-payer to claim said surplus; that to sustain the constitutionality of such act would be tantamount to providing for the taking of private property for public use without just compensation.

6. That the court erred in maintaining the constitutionality and validity of the ordinance for the relief of delinquent tax-payers of the constitution of the State of Louisiana if its object be to enable the legislature to provide a mode of disposing of the citizen's property delinquent for taxes by an unimpeachable title in a manner contrary to the provisions of the statutes under which the delinquent taxes were assessed; that such legislation would shut the delinquent tax-payer off from being heard and would deprive him of his property without due process of law, and to place such
149 a construction on the said ordinance of the said constitution and maintain its constitutionality would deprive said Rafael Maria Del Castillo of his property without due process of law.

7. That the decision of the said supreme court of Louisiana is in favor of the validity of said act 82 of 1884 in all its provisions above set forth and the constitutionality and validity of the said ordinance of the State constitution under the construction adopted in said decision, which plaintiff and plaintiff in error hereby alleges are repugnant to and in conflict with said fifth amendment of the Constitution of the United States.

Wherefore the said Rafael Maria Del Castillo, plaintiff and plaintiff in error, prays that the judgment or decree of the said supreme court of Louisiana rendered in this cause be annulled and avoided and reversed with costs, and for costs and general relief.

JNO. WATT AND
KERNAN & WALL,
Att'ys for Plaintiff and Plaintiff in Error.

150 [Endorsed:] No. 11784. Div. —, supreme court. Rafael Maria Del Castillo *vs.* W. L. McConnico. Assignment of errors. Fergus Kernan, Wm. Winans Wall. Jno. Wall, Kernan & Wall, Morris building, New Orleans, La., attorneys for pl'ff & pl'ff in error. Filed July 5th, 1895. Paul E. Mortimer, d'y clerk.

Endorsed on cover: Case No. 15,970. Louisiana supreme court. Term No., 307. Rafael Maria Del Castillo, plaintiff in error, *vs.* Walter L. McConnico, John H. Lang, Horace C. Reese, and William H. Fitzpatrick. Filed July 27, 1895.

SUPREME COURT OF THE UNITED STATES.

No. 307.

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTILLO

versus

W. L. McCONNICO.

AND

WM. H. FITZPATRICK, HORACE C. REESE, J. H. LANG.

IN WARRANTY,

BRIEF IN BEHALF OF DEFENDANT AND APPELLEE.

SYLLABUS.

The writ of error issued herein should be dismissed for want of jurisdiction.

The record should show that the alleged conflict between the Federal Constitution and the State law was specially pleaded in the State court before final judgment. Sayward vs. Denny, 158 U. S. 180; Loeber vs. Schroeder, 149 U. S. 580: Pim vs. City of St. Louis, 17 Supreme Court, 322; Rev. Stat. U. S. 709.

A writ of error to a State Supreme Court can not be sustained when no Federal right was set up or claimed until the filing of a petition for rehearing after final decision by such court. Ib.

The latitude in pleadings allowed by the Louisiana Courts, to plaintiff in a purely petitory action does not apply to cases where particular transfers are declared nullities. In such cases the action is a personal action of nullity, and plaintiff is held to his allegations of record. Michel vs. Stream, 48 La. An. 341; Belaud & Johnson vs. Gebelin & Duggan, 46 An. 327; 47 An. 427; 24 An. 445.

The practice in the State courts can not have the effect of altering the rules and proceedings of the United States Supreme Court, hence any latitude in practice which a State court might permit can not be invoked to excuse the absence from the record of pleas which the Supreme Court of the United States requires to be specially urged, as a condition precedent to its exercising jurisdiction.

The tax deed affords conlusive evidence of compliance, by the assessing and collecting officials, with all matters pertaining to the assessment of and sale of property which are within the original discretion of the Legislature, and as to such matters it can not be contradicted (Act 82 of 1884; Cooley on Taxation, pp. 305, 306; Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306, and authorities there quoted).

In this case the name was correctly given.

The law only recognizes one Christian name, and where several names or prefixes intervene between the first Christian name and the surname they form no part of the name, and their omission does not invalidate the proceeding (17 La. 504; 37 West Va. 665; 50 N. W. Reporter, 701; Black on Judgments, 213).

Plaintiff signed his name R. M. Castillo, omitting the prefix "Del." The assessment, then, to R. Castillo was correct.

An assessment in the name of the owner is a matter within the original discretion of the Legislature. Property may be assessed simply as property without regard to the name of the owner. Acts of La. No. 85 of 1888, Sec. 18; Cooley on Taxation, 399; Thompson et al. vs. Lessee of Carroll et al., 22 Howard, 433; Witherspoon vs. Duncan, 4 Wallace, 217.

The Legislature may validate retrospectively any irregularity in assessments in regard to matters within their original discretion. Cooley on Taxation, 305 and 306; Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306.

An assessment in a given name being a matter within the original description of the law-making power, a variance in the name, the description of the property being correct, comes within the purview of the remedial statute. Act 82 of 1884 is a remedial statute, intended to cure just such defects as is here complained of. Lake's case, 40 An. 145; *In re* Douglas, 41 An. 769; Henderson vs. Ellerman, 47 An. 306; Augusti vs. Lawless, 45 An. 1370.

Act 82 of 1884 has but one object—*i. e.*, to carry into effect the ordinance for the relief of delinquent taxpayers, and it is not unconstitional. Lake's case, 40 An. 145.

The constitutional ordinance was intended to relieve "delinquent taxpayers." A taxpayer is delinquent when the tax is not paid, whether the property has been forfeited to the State or not. The ordinance embraced both classes of property, and the act of 1884 in terms included both.

The advertisement contained the full name of defendant. Notice by publication was sufficient. The addenda "or her estate or heirs" was surplusage, and did not mislead the owner, who knew his name and property.

A final judgment compelling a party to accept and pay for a tax title will act as an equitable estoppel upon the Court, restraining it from setting aside that title in another suit, at the instance of a former owner, who has been delinquent in his obligations to the State for more than a quarter of century.

In construing State constitutions and State laws, the Supreme Court will accept the adjudications of the State Courts as conclusive. Sanford vs. Poe, 17 Supreme Court, 305; Marx vs. Hanthorn, 148 U. S. 172; Burgess vs. Seligman, 107 U. S. 20; Cooley's Constitutional Limitations, 4th Ed., 16; 6 Peters, 291.

The Supreme Court of Louisiana has held Act 82 of 1884 constitutional, and this Court will not disturb its findings.

The Louisiana statute reserves to the tax debtor all his substantial rights, and only makes the tax deed conclusive as to non-essentials, and such a statute is constitutional. Lake's case, 40 An. 145; *In re* Douglas, 41 An. 763; 98 U. S. 517; Cooley on Taxation, 305.

"Due process of law" has not the same significance in tax proceedings that it has in personal actions. In the former, the well recognized and summary proceedings generally employed to enforce collections constitute due process of law. Baker's Annotated Constitution, 216; 115 U. S. 321; 96 U. S. 97; 95 U. S. 37; 18 Howard, 272.

It is not the policy of this Court to interfere with the revenue laws of the States nor with the interpretation given to them by their courts, and a State can provide that an erroneous assessment does not vitiate a sale for taxes.

Witherspoon vs. Duncan, 4 Wall. 217.

Statement of the Case.

While this is a petitory action, it is not an ejectment proceeding, but is a direct personal action to annul a title (see R., p. 2).

Defendant's title, while founded upon a tax sale and involved in the validity of the tax sale, is not, strictly speaking, a tax title, since he bought the property long after the tax sale and paid the full market value of the property at the time, to-wit: the sum of $5800, for same (see his titles, R., pp. 20, 21 and 23).

Defendant did not "set up title in himself by conveyances from one Orloff Lake," but, as his answer shows (R., p. 3), admitted his ownership by virtue of conveyances from Reese and Fitzpatrick, said conveyances having been alleged by plaintiff in error in his original petition (R., p. 1).

Reese and Fitzpatrick, called in warranty, admit their acquisition as detailed in petition of plaintiff in error, and plead, in addition to the title received by them from Lang, a judgment of the Civil District Court for the parish of Orleans, entitled John H. Lang vs. M. Kauffmann and W. H. Fitzpatrick, No. 34,386 of its docket, as *res judicata*, said suit being an action by Lang to compel the acceptance of title to this property by said Kauffmann and Fitzpatrick, same having been objected to by them as being founded upon the very tax sale herein complained of by plaintiff in error (see R., pp. 6 and 8). Warrantor J. H. Lang admits and

avers the sale under the act of 1884, and his compliance with all the requirements imposed by law upon Lake, the tax purchaser, but, aside from that, from the foregoing it will clearly be seen that all averments of title and conveyances, and *especially the tax sale complained of, were made by plaintiff in error.* That defendant merely admitted plaintiff's allegations in this respect, and that nowhere in defendant's pleadings is the tax sale from the State of Louisiana advanced as his muniment of title. *It was not,* therefore, set up by defendant, but was directly attacked by plaintiff in error in his original petition.

The evidence shows:

(*a*) W. L. McConnico acquired an undivided one-half of said property by purchase from H. C. Reese, March 2, 1893, for the sum of $2300 (R., p. 23).

(*b*) That said McConnico acquired the other undivided one-half of said property by purchase from W. H. Fitzpatrick, March 9, 1894, for the sum of $3500 (R., p. 21), (thus becoming sole owner of the property *for a consideration of $5800*).

(*c*) That W. H. Fitzpatrick and H. C. Reese each acquired an undivided one-half of said property by purchase from John H. Lang for a consideration of $2500 (R., p. 25)—Reese being substituted in the sale for one Maurice Kauffmann.

(*d*) That Lang contracted to sell to Fitzpatrick and Kauffmann (R., p. 44). That Fitzpatrick and Kauffmann refused to accept title to said property because Lang's title thereto was based upon a tax sale (R., p. 42). That Lang filed suit against them to compel acceptance of title (R., p. 41). That after trial of the issues raised, which were identical with those involved in this case, the Court rendered judgment (R., p. 47) compelling them to take the property and pay the price thereof, to-wit: $2500.

(*e*) That Long acquired from Lallance (R., p. 36, item six). That Lallance acquired from Lake (R., p. 32. item eight), and that Lake acquired from the State of Louisiana, under Act 82 of 1884 (R., pp. 47, 48, 49 and 50).

(*f*) That the amount paid by Lake to the State was $35 (R., p. 49), and that the amount of taxes due to the State for

the taxes of 1876, 1877 and 1878 was $38.50, exclusive of interest and costs (R., p. 48).

(*g*) That the property was adjudicated to the State for the taxes of 1880, 1881, 1882 and 1883, assessed in the name of R. Castillo (R., pp. 53, 56, 59, 62 and 63).

(*h*) That Lang paid these taxes and redeemed the property (R., pp. 80, 81 and 84).

(*i*) The evidence does not show, but it is admitted that the property was not adjudicated or forfeited to the State for taxes prior to 1880.

(*j*) That the property was acquired by Rafael Maria del Castillo, December 23, 1851 (R., p. 17), and that Castillo *signed his name R. M. Castillo* (R., p. 19) omitting the prefix del.

(*k*) That it was assessed for the years in controversy to-wit: 1876, 1877 and 1878, in the name of R. Castillo (R., pp. 64, 65). The assessment rolls for 1881, 1882 and 1883 are not in evidence. Tax researches issued by the city and State tax collector respectively, for the purpose of showing the amount of unpaid taxes, report taxes paid to the city in the name of R. Costillo from 1870 to 1875 and from 1880 to 1885 and to the State for 1884 and 1885. These certificates, however, are merely tax researches, and are not evidence of assessments (R., pp. 45, 46). There is no evidence whatever in the record of the assessment of those years.

(*l*) That the case was tried in the Court of first instance on its merits. Exceptions of no cause of action, based on the sale under the act of 1884, as alleged by plaintiff being overruled (R., pp, 5–6–9–10 and 40).

(*m*) Evidence tendered by the plaintiff was admitted over objections from defendant (R., pp. 14 and 15). This evidence is found in the record on pp. 64–65.

(*n*) The property was advertised in the name of Rafael Maria Del Castillo, with an addenda, in an abundance of caution, of "or her estate and heirs" (R., p. 40).

(*o*) The Court of first instance decided the case squarely on the evidence (R., p. 3). The constitutionality of the Act of 1884 was not an issue before that court and was not ar-

gued there. The sole question there was whether plaintiff had received notice. The Court held orally that the advertisement was proper, and conveyed full notice; that the assessment was in the name of plaintiff in error, and was a good and proper assessment, and the sale thereunder was a good sale. It may be well to say here that the present counsel for plaintiff in error was not engaged in the case when tried in the court of first instance. The record, pp. 3, 14, 15 and 40, shows that the pleadings were drafted and the case tried for plaintiff by W. S. Parkerson, Esq. So thoroughly satisfied was he of the correctness of the decision of the court that he declined to proceed further in the matter. It was then taken up by the present counsel. It is to be regretted that Judge Théard did not reduce his reasons for judgment, to writing, but since he did not do so, we can only refer the Court to his rulings overruling our exceptions of no cause of action, based on the provisions of the Act of 1884 (R., pp. 5, 6, 9, 10 and 40), and admitting evidence over our objections (pp. 14 and 15), together with his recorded judgment that the "law and the *evidence*" are in favor of defendant, to show that counsel are entirely in error, when they say that "the court of first instance maintained the constitutionality "of said act and ordinance upon all points," and held, etc. Had counsel been engaged in the case at that time, as the writer was, they would not have stated this proposition so broadly and so erroneously.

ARGUMENT.

JURISDICTION.

If the Court Pleases:

This case should be dismissed by the Court for want of jurisdiction, the constitutional question presented in the assignment of errors not having been seasonably raised by plaintiff in error, in the State court.

The record is painfully silent upon the subject of constitutional rights, and is barren of any reference to federal ques-

tions. Nor does the opinion of the Supreme Court of the State furnish the basis for the writ of error sued out herein. There is nothing in that opinion construing any part of the federal Constitution, but its entire context is devoted to the analysis and application of the State Constitution, and legislation enacted to carry its provisions into effect.

In his petition for a rehearing, after judgment had been rendered against him (see Record, pages 86 and 87), plaintiff in error alleges that said act (the Act 82 of 1884) is "violative of the fifth amendment of the Constitution of the United States." This is the first suggestion in the record of any conflict between the national Constitution and the Louisiana statute. The judgment of the Court upon this petition (see p. 88) was simply a refusal to reopen the case, without assigning any reasons for such refusal. It is, therefore, evident that the judgment of the State Supreme Court can not be tortured into deciding a federal question, even had one been raised.

Under the rulings of this Court even so late as the case of Pim vs. City of St. Louis, 17 Sup. Ct. Reporter, Vol. 17, No. 16, p. 322, the right claimed under the federal Constitution must be specially set up in the State Court before judgment, and denied by that Court. That when presented for the first time in a petition for a rehearing it comes too late. "We held at the present term in Chicago & N. W. Ry. Co. vs. City of Chicago, 164 U. S. 454 and 457—17 Sup. Ct. 129, as had frequently before been adjudged, that this Court would not review the final judgment of the highest Court of the State alleged to have denied a right protected by the Constitution of the United States, unless such right was specially set up or claimed in the State Court by the party against whom the judgment was rendered. Rev. St. U. S., 709." * * *

"Upon inspecting the record we find that no federal right was set up or claimed in any form until after the final decision of the case by the Supreme Court of Missouri, and then by a petition for rehearing. That petition was overruled by the Court without any determination of the alleged federal question, indeed without any allusion to it. The claim of a

federal right came too late so far as the revisory power of this Court is concerned" (Pim vs. City of St. Louis, 17 Sup. Ct. 322 and 323, referring to Loeber vs. Schroeder, 149 U. S. 580 and 585; Sayward vs. Denny, 158 U. S. 180 and 183.

Reference to the case of Sayward vs. Denny, 158 U. S. 180 and 183, cited above, shows that this Court fully reviewed the question of the manner in which a federal question must be raised in order that the writ of error may lie to a State Supreme Court. "And," says *Mr. Chief Justice Fuller*, "in that regard certain propositions must be regarded as settled.

"1. That the certificate of the presiding judge of the State Court, as to the existence of grounds upon which our interposition might be successfully invoked, while always regarded with respect, can not confer jurisdiction upon this Court to re-examine the judgment below. *Powell vs. Brunswick County Board of Suprs.*, 150 U. S. 433, 439 and cases cited.

"2. That the title, right, privilege or immunity must be specially set up or claimed at the proper time and in the proper way. *Miller vs. Texas*, 153 U. S. 535; *Morrison vs. Watson*, 154 U. S. 111, 115, and cases cited.

"3. That such claim can not be recognized as properly made when made for the first time in a petition for rehearing after judgment. *Loeber vs. Schroeder*, 149 U. S. 580., 585 and cases cited.

"4. That the petition for the writ of error forms no part of the record upon which action is taken here. *Butler vs. Gage*, 138 U. S. 52, and cases cited.

"5. Nor do the arguments of counsel, though the opinions of the State Courts are now made such by rule. *Gibson vs. Chouteau*, 75 U. S. 8 Wall, 314; *Parmalee vs. Lawrence*, 78 U. S. 11 Wall, 36; *Gross vs. United States Mortg. Co.*, 108 U. S. 477, 484; *United States vs. Taylor*, 147 U. S. 695, 700.

"6. The right on which the party relies must have been called to the attention of the Court, in some proper way, and the decision of the Court must have been against the right claimed. *Hoyt vs. Thompson*, 66 U. S. 1 Black, 518; *Maxwell vs. Newbold*, 59 U. S. 18 How. 515.

" 7. Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved so that the State Court could not have given judgment without deciding it; that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the State Court can be held to have disposed of such Federal question by its decision. *Powell vs. Brunswick County Board of Supvrs.*, 150 U. S. 438, 439.

" Tested by these principles it is quite apparent that this writ of error must be dismissed."

The language of this Court in the cases cited is strikingly applicable to this case. Here we have a case wherein the record is absolutely devoid of any suggestion of conflict between the Constitution of the United States and the State law, and in which the decision of the Court contains not the faintest intimation that any such question had even been dreamed of. When all at once, in the application for a rehearing, counsel advance the claim that the fifth amendment to the United States Constitution has been shattered by this much-abused and frequently-construed tax statute, and that plaintiff in error has been deprived of his property without due process of law; asks the Court to reopen the case, and, upon its refusal to do so, drags us all the way up here to occupy the time of this Court with a matter of which it can take no notice, upon any theory that may be advanced.

The case of Sayward vs. Denny, cited above, distinctly lays down the doctrine that the " petition for the writ of error forms no part of the record upon which action is taken here." This being so there is nowhere an averment of a right denied under the Federal Constitution upon which this Court can act. The record is silent until we come to the petition for a rehearing. That document, under the authorities quoted, if it raises a question at all, does so too late to be considered. But even supposing that it were not too late, does it raise such a question at all? Its averment is " violative of the *fifth* amendment of the Constitution of the United States." No intimation is anywhere given in said petition for a rehearing that any other article or amendment of the Constitution is violated.

It is well recognized and can not now be gainsaid that the prohibitions contained in the fifth amendment are directed against the general government, and not against the States. This doctrine has been recognized and acted upon since the adoption of the Constitution itself. "The fifth amendment must be understood as restraining the power of the general government, not as applicable to the States." "The provision in the fifth amendment * * * is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States" (Baker Annotated Constitution, p. 182, and authorities therein quoted). This view of the application of this amendment has obtained from the earliest days of the Republic, and can not now be seriously questioned, hence we say that a petition for a rehearing which alleges a conflict between a State law and the fifth amendment to the Constitution does not raise a Federal question, and confer jurisdiction upon this Court.

Foreseeing our objection to the raising of a Federal question in the application for a rehearing and in the petition for the writ of error, plaintiff in error seeks to eke out his case by invoking the right recognized in Louisiana, in a class of cases, to which the instant case does not belong, for the plaintiff to urge orally at the trial any defence as to matters not originally pleaded by plaintiff, but propounded in the answer of defendant; the Louisiana system of pleading not admitting of replications, but considering the plaintiff as denying, generally, any new matters set up by defendant. Or in suits for slander of title, the plaintiff being in possession as owner, where the defendant claiming ownership, sets up title in himself, the plaintiff is permitted to attack the title claimed by defendant with every weapon at his command The decisions quoted by plaintiff in error go to this effect, no further. There is not one of them that holds, in a direct action to annul a title of record, the defendant being in possession as owner, and his title, as in this case, *being set out at length* by plaintiff, that plaintiff shall be excused from setting up originally and specifically his every objection to same.

In the majority of the cases cited by plaintiff, possession of the property in dispute was with plaintiff, and in every case the question of title as an issue, was raised by defendant. In this case the sole question is defendant's title, and that issue being raised by plaintiff (see Record, p. 2), the nullity thereof being claimed for reasons stated, *it was his duty to set forth all of his objections to the title he was attacking.* We have not found a single case which holds in a case like this, that he may be excused from so doing or that he may be permitted to orally inject further pleas into the case.

"Plaintiff brings this action to recover a certain lot of ground in the city of New Orleans, which he alleges defendant has illegally taken possession of. * * *

"The plaintiff is really seeking to attack a judgment and a sale under it without having alleged in his pleadings any irregularity or illegality before or after the judgment. This can not be done. The defendant's title will be upheld until its defects (if any there be) be specially stated and proved."

F. Lacroix & Cordeviolle vs. Edward D. White, 24 An. 445.

"Plaintiff in bringing a petitory action is not necessarily forced to cumulate therewith an action of nullity to set aside judicial proceedings in which apparently his title to the property has been divested. He has, *at his risk*, the right to allege such procedings to be absolute nullities, and to go to trial on that issue." Beland & Johnson vs. Gebelin & Duggan, 46 La. An. 327. Affirmed in Callahan vs. Fluker, 47 La. An. 427.

Callahan vs. Fluker, 47 An. 427.

But, even if we are wrong in our view of the want of right in plaintiff in error to urge unpleaded objections in the State Court, we think that the practice there can not affect the well settled rulings of this Court, backed by Rev. St. U. S. 709, that such right must be specially set up or claimed in the State Court, and that the record must contain within itself, evidence that such question was raised and decided adversely to the right claimed. The decisions of this Court, hereinbefore quoted, are, it seems to us, conclusive that where the record, or the decision of the State Court, does not show the question

to have been raised and decided adversely to the claim, the jurisdiction of this Court can not attach. If, as is affirmed in Sayward vs. Denny, quoted above, "the certificate of the presiding judge of the State Court as to the existence of grounds upon which our jurisdiction might be successfully invoked * * * can not confer jurisdiction upon this Court to re-examine the judgment below," the argument of counsel, based upon authorities totally inapplicable to the case, certainly can not vest that jurisdiction.

We respectfully submit, therefore, that the writ of error issued herein should be dismissed for want of jurisdiction.

MERITS.

The theory upon which this suit was brought is entirely at variance with the line of argument now adopted by plaintiff in error. The plaintiff originally rested his case upon his claim that the assessment of the property was erroneous, and therefore null, and that the advertisement under which the sale took place was defective. These were the sole issues tendered and tried in the court of first instance and were the only points decided by that court, and so well satisfied with the correctness of the decision was the attorney who tried the case for plaintiff, that he declined to prosecute it any further. It was then that present counsel took charge of the case, and after an adverse decision by the State Supreme Court, have sued out the writ of error to this Court.

We have already stated our objections to the jurisdiction of the Court, but desire to say here that plaintiff in error being a foreigner and having the choice of tribunals, selected the one he deemed the most favorable to his cause, and having had his day in that forum, should abide the result. It is a matter of local history in New Orleans, that the United States courts there are much more strongly inclined to favor the validity of tax titles, and particularly those based upon the act of 1884, than are the State courts. It so happened that both of the Federal judges were members of the constitutional convention which adopted the ordinance under which

the law in question was passed; that they assisted in framing said ordinance and voted in the convention in favor of its passage, and now on the bench assist by their judgments to carry it into effect. The general knowledge of this tendency upon their part has, notoriously, induced the formation of corporations under the laws of other States, which, dealing in tax sale properties in Louisiana, claim the protecting jurisdiction of the Federal courts to enforce the sales. It was, unquestionably, this knowledge that induced plaintiff in error to select the State court, it being more favorably disposed to his side of the case, as the Court before which he would plead his cause. His petition, therefore, was carefully drawn, so as to avoid any question of the conflict between the tax statute and the United States Constitution, and to present solely the question of the sufficiency of the assessment and notice by publication.

The Court of first instance decided that the assessment was good, and that notice by publication had been given to plaintiff. As we have shown in our statement of facts, by reference to the record, this decision was reached by the Court after a full hearing and upon evidence admitted over our objections. Plaintiff in error has not, therefore, been deprived of his property without due process of law, as he has as a matter of fact submitted his cause to a tribunal of his own choice and had judgment thereon.

At the outset of this discussion we desire to disabuse the mind of the Court of the idea that we are merely defending a tax title in the ordinary acceptation of that term. While it is true that in order to vindicate our ownership of the property we are of necessity bound to maintain the validity of the tax sale, and the competency of the legislation under which it was made, we are still before the Court as a purchaser in good faith for full value (nearly $6000) of property, the title to which had by a court of competent jurisdiction been declared to be without a flaw, with regard to the identical tax proceeding herein sought to be avoided.

The situation of the warrantors, Fitzpatrick and Reese, in this attack upon the tax title, is one which peculiarly invites

in their favor every equitable consideration. Knowing the uncertainty with which it was the vogue to clothe such titles made by the State—though by reason of their authorship they should ever be the stanchest and most reliable of titles—these intending purchasers declined to perfect their contract of purchase. The power of the judicial arm of the government was invoked to compel them. A suit was regularly instituted before a perfectly competent Court, issues joined, and the very causes of possible invalidity of the title which are now urged against it were submitted to the Court for adjudication. The Court solemnly decreed the title to be good, unimpaired by the causes propounded against it, and commanded these warrantors to take it in fulfilment of their contract. Under such judicial compulsion they complied, and parted with their money.

It is not pretended that, as against the present plaintiff, that decree constitutes *res judicata*, because he was not a party to it. Yet that decree has surely some quieting and protecting force and virtue, and is entitled to be respected. It was final, and is and was as effective as any decree of the Supreme Court. It decided the title to be a lawful and legal one, and that decision is as unimpeachable and conclusive of that question as any this Court can pronounce, and, being final, is of equal dignity. In obedience to it, and upon faith in it, the warrantors acted. It would be strange, anomalous and unseemly that this Court should, to the prejudice of the warrantors, pronounce their title invalid; that one final decree of a competent Court should compel them to buy the title as a lawfully sound title, and that another final decree of a competent Court should strip them of it as unlawful and radically null, the charges of nullity being identical in the two instances. Such an outcome of a *bona fide* submission of a serious question to the judiciary would not be creditable to the administration of law and justice. It would give at least apparent foundation for the fear already entertained by many citizens, that in the courts of justice are numerous springs and man-traps, set for the destruction of the suitor.

Therefore, while, as we have said, the judgment of the Civil

District Court, Division "A," does not constitute *res judicata* as to this plaintiff, according to the Civil Code definition of "the thing adjudged," yet we say it operates a strong estoppel upon the courts from disturbing its effect. To grant the prayer of the plaintiff's petition, will be in effect to reverse, annul and avoid, as erroneous, that judgment, though it is, by the very terms of the law, as final and irrevocable as if it had been affirmed on appeal to this Court, and would be utterly to destroy that judgment, though it can now never be appealed from. For the sake of certainty and stability, which constitute the most precious qualities of judicial operations; for the sake of confirming the confidence of citizens in the consistency of the administration of justice by the courts, without which confidence courts everywhere lose their usefulness, your Honors will hesitate long before introducing such an incongruity into judicial proceedings as the annihilation of rights sanctified by a judgment of equal finality and dignity as that by which they are destroyed.

It is true that the Supreme Court of the State viewed the case "as one where the property of a citizen, to which the State had no shadow of title," had been sold for taxes under the Act No. 82 of the session of 1884. Defendant does not claim otherwise. But it is not true that the "alleged adjudications to the State of Louisiana were not considered material, because they had been wiped out by a redemption to the name in which they were made, and the assessments on which they were based being radical nullities, owing to misdescription of the owners." (See Plaintiff's Brief, p. 7.)

This statement is erroneous and misleading.

The sale to Lake was for the taxes of 1876, 1877 and 1878. The adjudication to the State was for taxes of 1881, 1882, 1883. The Court in its opinion (p. 84) says: "The adjudication to Lake in 1885 under the act of 1884 was followed by the deed authorized by that act, and it further appears *that one of Lake's vendees has paid all the taxes accrued since 1879*, MANIFESTLY INTENDED TO COMPLETE THE TAX TITLE." (The italics and capitals are ours.) We make this reference to show that the Supreme Court not only did not, as counsel states, consider

these adjudications immaterial, as being erroneous, but that it, as a matter of fact, considered the redemptions from said adjudications to the State, same being made by "one of Lake's vendees," as payments "manifestly intended to complete the tax title." And this was just what they were.

We will discuss first the facts of the case and then take up the question of the authority of the Legislature to adopt legislation of the character which plaintiff in error complains of.

An examination of plaintiff's petition shows that his sole grounds of complaint are that the assessment, advertisement and sale for the years 1876, 1877 and 1878 were "null and void, and of no effect." Why? Because for those years, the ones for which the sale was made, the assessment rolls, admitted over our objection, show that the property was assessed to R. Castillo, and that in the advertisement through an abundance of caution the tax collector had added, after the name, which, by the way, was the full name of plaintiff in error, the words "or her estate and heirs."

The principal question is as to whether or not the assessment to R. Castillo was an assessment in the name of the owner, and, if not, whether the variance is cured by the remedial statute, and in this connection it must be determined whether all the names and prefixes of an individual must be given on the rolls, or if one is sufficient. In judicial proceedings only one name is required to be given. The Code of Practice, Art. 179, says that the citation shall contain "the name of the defendant." Art. 172 says that the petition must contain the "name and surname" of plaintiff. Neither article says that the *names* of parties must be given. Where the law calls for the name of a person, the first name or initial is sufficient. In Shipman & Ayres vs. Haynes, 17 La. 504, the Court said: "The Code of Practice, Art. 172, requires a name and surname, not the *names* and surname." This is the view taken by the common law. We find in the American Digest for 1893, p. 3548, quoting 37 West Va. 665: "A middle name or its initial is no part of the name of a person," and in the same Digest for 1892, at p. 3729, quoting 50 N. W. 701 (a

North Dakota case): "In foreclosure proceedings under a power of sale in a mortgage, a mistake in the middle initial in the mortgagor's name will not invalidate the sale, since the law recognizes but one Christian name."

In Black on Judgments, at p. 213, we find the following: "It was enough that one Christian name was properly added to the surname of the defendant, for in legal proceedings the law recognizes but one Christian name, and where a party is sued by that alone the proceedings taken may regularly be continued to judgment in that name, and the fact that he may have one or more other names between his first Christian name and his surname will in no way affect their validity. This is an old and well-established rule of the common law, and has in no manner been changed, either by legislation or the rulings of the Court in this State. So there is no material variance where a judgment is entered in favor of Laura Wilcox, guardian of W. L. Wilcox, when thecorrect name of the infant is W. B. Wilcox."

It is quite clear from the foregoing that in this case the assessment is a good one, and this is more apparent when, as shown by appellant's own signature to the title under which he claims, the prefix "Del" is omitted, as not forming any part of his name. It will be observed that his name is signed to said act as R. M. Castillo. He has himself placed in the record the best possible evidence that this prefix forms no part of his name. The name as signed by plaintiff himself is R. M. Castillo, and as under the above quoted authorities the middle initial is unimportant, forming indeed no part of the name, and the prefix Del being immaterial, it follows that the assessment to R. Castillo is a good assessment, and a sale made thereunder is valid.

We think that we have demonstrated the assessment to have been good and the sale thereunder binding, but let us go a step further. This sale was made under the provisions of Act 82 of 1884, and we think it all the stronger for that.. We take the position that under that act plaintiff is precluded from questioning our title in the manner attempted. There is no allegation in the petition to warrant it. It is not alleged

that the property was not assessed; on the contrary, there is a distinct statement that there was an assessment. The taxes were not paid. The property was not exempt. It was correctly described. All the indispensable jurisdictional prerequisites were complied with. There was some question in argument, as to notice, which will be touched on later. The whole burden of the complaint of plaintiff in error is that the assessor described him as R. Castillo instead of by *all* his names. We contend that the officer has done his full duty, but even if he had not, the healing effect of the statute would apply and the sale would still be good.

Where a sale is made under the revenue laws for current taxes it may be readily conceded that the most rigid compliance with all the forms is imperatively demanded. But where the sale is made under a remedial statute, as the act of 1884, the entire reason and purpose of the law would be defeated if the same unbending adherence to form were demanded. The constitutional mandate was that the mass of delinquent taxes then owing to the State should be collected, and to that end, after the period of grace extended by the ordinance had expired, the Legislature was commanded to enact such laws as would accomplish that object, by selling the property subject to the tax, and vesting the purchaser with a *complete* and irredeemable title.

The definition of "complete," as given by Mr. Worcester, is: "Having no deficiency, perfect, consummate, entire, finished, ended, concluded." If then the ordinance for the relief of delinquent taxpayars is to be given effect, the act providing for the sale of property for the taxes covered by the terms of the ordinance should receive such a construction as will compass that end. This was the view taken by the Supreme Court of Louisiana, it seems to us, in the decision of the Lake and Douglas cases, affirmed so positively in the case of Henderson vs. Ellerman, 47 An. 306.

In re Orloff Lake the Court said: "Reference to the paragraph we have quoted from the petition of opponent will disclose that he does not allege that *no assessment* was made at all, but that he does allege that the property was not assessed

in the name of Mrs. H. P. Harrison, etc.; that the same was *illegally assessed in the name of* John Boylan," etc.

"What is meant by the phrases that the property was *assessed according to law.* * * * That the property was *advertised according to law.*

"Do they not necessarily imply that all these essentials had been fulfilled, and that the tax title is only made *conclusive evidence* that if performed they have been performed according to law? Does it not follow as a legal sequence that as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed *in the name* of John Boylan, it is excluded by the deed, because *it* furnishes conclusive evidence of the correctness of the assessment, if made at all? It would seem so."

In the Douglas case, 41 An. 769, the Court used the following language: "The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements with the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential." Cooley on Taxation, p. 282: "If the proceeding had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute intended, and was competent to heal."

It is not alleged herein that there was no assessment at all, but, as in the Lake case, that the property *was* assessed but assessed in the wrong name. We think we have shown the assessment to have been correct, but even if the name was wrong, which we do not for a moment admit, we hold that such defect was healed by the curative statute; as was decided in Lake's case.

Here was an assessment in the name of the owner. The property was accurately described. The taxes for which the property was sold were due. The advertisement contained the full and correct name of the owner, as declared by himself in this suit. The adjudicatee has paid the subsequent

taxes and costs as required by the law and his bid. He went into possession of the property, and himself and his vendees have held open and notorious possession as owners for nearly ten years.

What more is needed to make a tax title complete?

Plaintiff in error claimed that because the collector, through an abundance of caution, inserted in the advertisement, after the name "Rafael Maria Del Castillo," the words "or her estate and heirs," he received no notice of the sale; that the advertisement was misleading and was not such as to put him on his guard. Little or no argument is necessary on this point. The full name of the owner was published in the advertisement. He is presumed to know his property and to know whether he has paid his taxes or not. He knows that taxes are due each year; that if they are not paid that property is sold to enforce payment, and when he sees his property advertised for sale by a correct description and under his name, for taxes which he knows he has not paid, it is idle for him to say that he has not been notified, or that the mere addition of the words "or her estate or heirs," after the name, was misleading to him.

The name "Rafael Maria" was misleading to the collector, but the addenda could not possibly have misled Castillo, who was thoroughly familiar with both his own name and property, and especially could he not be misled when they were published in connection the one with the other.

In its opinion in this case (see Record, p. 85) the Supreme Court said: "Sales of property for taxes prior to 1879 are governed by the ordinance for the relief of delinquent taxpayers and by the act of 1884 prescribing newspaper notice. *In this case the advertisement gave the full name of plaintiff*, adding her estate or heirs, *and in our view the advertisement conforms to the requirement of the act.*" (Italics ours.)

We have gone thus fully into the facts of the case, and the law applicable to those facts, in order to show to the Court, from the Record itself, that plaintiff in error was deprived of no right guaranteed him under the Constitution of the United States, but that he invoked and had accorded him "process of

law" to test the correctness of the tax proceedings, and that after a full hearing the case was decided against him.

ACT 82, SESSION OF 1884, CONSTITUTIONAL.

The Supreme Court of Louisiana has decided that the act of 1884, No. 82, was intended solely to carry into effect the constitutional ordinance for the relief of delinquent taxpayers. Lake's case, 40 La. An. 147.

In order to correctly construe this constitutional ordinance, and the legislation adopted to carry it into effect, it is necessary for the Court to understand something of the conditions which prevailed in Louisiana at the time her present Constitution was adopted. The State had, from the close of the war up to that time, 1879, been under the control of carpetbag and alien officials, whose chief aim was the enrichment of themselves and their favorites at the public expense. The recklessness and cupidity of these officers plunged the State enormously in debt, and their carelessness threw her accounts into hopeless confusion. This was the state of affairs prevailing when the people of the State recovered control of her destinies. And when, in 1879, a Constitutional Convention was held, and that body addressed itself to the cleansing of the "Augean stable," it was discovered that the books of the Auditor of the State and of the various tax collectors teemed with delinquent taxes, some of which rested upon property that had not for years contributed anything to the public treasury. In order to induce the payment of these taxes and to enforce payment in case the owners neglected or still refused to pay same, the convention adopted what is termed the "Ordinance for the Relief of Delinquent Taxpayers." This ordinance, which which was submitted with the balance of the Constitution to the people of the State for ratification, was voted upon and adopted by the people as a part of their organic law, and has the same force and binding effect as all other parts of that instrument.

So much of the ordinance as affects the case reads as follows:

RELIEF OF DELINQUENT TAXPAYERS.

" Art. 1. Be it ordained by the people of the State of Louis-
" iana, in convention assembled: All interests, penalties, costs,
" fees and charges whatever, on taxes and licenses due the
" State, or any political corporation therein, prior to the first
" day of January, 1879, and yet unpaid are remitted; and all
" property forfeited to the State or any political corporation
" on account of non-payment of taxes and licenses, or to which
" the State or any political corporation now has a title, shall
" be redeemable, and the title to the State or any political
" corporation thereto annulled, upon the payment by the
" debtor, or any interested party, of the principal of all taxes
" and licenses that may be due thereon at the date of redemp-
" tion, and this right of redemption shall continue until the
" first day of January, 1881. In the event the principal of
" said taxes and licenses is not paid by said time, the inter-
" ests, penalties, costs, fees and charges hereinbefore remitted
" shall revive and *attach to the property upon which the taxes*
" and licenses are due, *and such property shall be then sold in*
" *the manner to be provided by law, and the title to the purchaser*
" *shall be full and complete* * * * and provided fur-
" ther, that nothing in this ordinance shall be taken as
" granting any time for the payment of the principal of said
" taxes and licenses; and provided further, that interest
" shall accrue and be collected on the principal of said delin-
" quent taxes and licenses," etc. (Italics ours.)

The purpose of the ordinance was to induce persons who were delinquent in the payment of their taxes, of which there were a great many, to settle their indebtedness to the State, and to accomplish this, they were offered the privilege of paying, if simply delinquent, without interest or other penalties, or if the property had passed to the State or political corporation, of redeeming same upon payment of the amount of the tax without interest or costs, provided said payment was made by January 1, 1881. If not, the property, whether delinquent or forfeited to the State, was to be sold *in the manner to be provided by law*, and the *title of the purchaser was to be full and complete.*

The Court will observe that this is a provision of the organic law, which had been submitted to a vote and was adopted by the people. It directs the passage of laws to carry it into effect and commands the law-making power to enact a law which will give to the tax buyer, a "full and complete" title to the property which he buys.

In response to this mandate, Act 107 of 1880 and Act 98 of 1882 were passed. Act 107 of 1880 did not accomplish the purpose, because by its terms it was limited in its application to "the sale of all property forfeited or sold to the State for delinquent taxes or licenses." Where it was established that the property had been "sold or forfeited to the State," the act applied, and a valid sale could be made. But right there was the trouble. The Legislature had failed to provide for the sale of property *which had not* been forfeited or sold to the State. To cure this, Act 98 of 1882 was passed, but it also failed of its purpose because of its specific directions, and the limitation of the price at which the collector could sell. Act 82 of 1884 then became necessary, with its remedial and healing effect, and unlimited price. Like Act 98 of 1882, it embraced all classes of delinquent property, whether forfeited or sold to the State or not; and under it, for the first time, the State was enabled to effectually carry out the constitutional ordinance.

That portion of Act 82 of 1884, bearing upon the issues herein raised, reads as follows:

"SECTION 1. Therefore, be it enacted by the General "Assembly of the State of Louisiana. That it shall be the "duty of each tax collector, and *ex-officio* tax collector, to "immediately advertise for sale at public action, all prop-"erty which has heretofore been, or which may hereafter be "bid in for the State, under the provisions of existing laws, "*and all property on which there remain unpaid taxes due the* "*State prior to December 31, 1879.* That all such property "shall be advertised three times in thirty days, and in Eng-"lish only, the last advertisement to occur on the day on "which said property is advertised to be sold. *Such adver-*"*tisement shall be full and sufficient notice to all persons inter-*

" *ested, and no other notice shall be required.* The property " shall be advertised by a description only sufficient to " identify, describe or deliver the property. Such adver- " tisement shall *contain* the name of the party in whose name " the property was assessed, *or the name of the present owner* " *of the same*, and said advertisement must designate the time " and place of offering. If the sales advertised to take place on " a specified day are not completed on said day, the same shall " be continued over from day to day until the same are com- " pleted. In advertising said property for sale, the tax col- " lector may include between one general heading and one " general conclusion several pieces of property.

" SEC. 2. Be it further enacted, etc., That said property " shall be adjudicated and sold to the last and highest bid- " der for cash. * * *

" SEC. 3. Be it further enacted, etc., That each tax collect- " or and *ex-officio* tax collector shall, as soon as said adjudi- " cations to bidders are made and complied with, execute to " each purchaser a deed of sale in the name of the State, of " each specific piece of property, before a duly qualified " notary public by authentic act, to be by him selected, a " duly certified copy of which deed shall be *prima facie* evi- " dence of the following facts: 1st. That the property con- " veyed was subject to taxation; 2d. That none of the taxes " for which said property was offered were paid, and said " deed shall be conclusive evidence of the following facts: " 1st. That the property was assessed according to law; " 2d. That the taxes were levied according to law; 3d. That " the property was advertised according to law; 4th. That " the property was adjudicated and sold as stated in said " deed; and, 5th, That all the prerequisites of the law were " complied with by all the officers, from the assessment up to " and including the execution and registry of the deed to " said purchaser; and duly certified copies of said deeds " shall be full proof without further evidence of all con- " tained therein. If only a portion of the taxes for which " the property is sold are proved to have been paid, the sale " and the title to the purchaser shall nevertheless be good

" and valid, the same as if all the taxes for which it is sold " had not been paid."

Plaintiff in error contends in his application for a rehearing and in his assignment of errors that a sale made under this statute deprives him of his property without due process of law, and that it is beyond the power of the Legislature to enact such a law. We respectfully submit that this is no longer an open question. There have been too many decisions of the Courts, both State and Federal, sustaining such laws, to admit of a doubt upon this point. This very statute has been several times before the Louisiana Supreme Court upon this question, and each time the Court has upheld the authority of the Legislature in the premises. Lake's case, 40 An. 142; Douglas' case, 41 An. 765; Breaux vs. Negrotto, 43 An. 430; Henderson vs. Ellerman, 47 An. 306.

In this connection we beg to call the attention of the Court to the carefully considered and comprehensive opinion of Mr. Justice Fenner, of the Louisiana Supreme Court, in the Douglas case, wherein this very point was involved.

"The answer of the mortgagees sets out various defences entirely similar in character to those which were made, and overruled, by us in a recent case, In the matter of Orloff Lake, 40 An. 142.

"The Act 82 of 1884 is a remedial and healing statute, similar to others which have been passed in many States of the Union, the effect of which is to cure defects in prior tax proceedings by making the tax deeds conclusive evidence that the requirements of the law in certain matters had been complied with.

"Such statutes have been frequently subjected to judicial consideration and review.

"The principle is universally acknowledged, that where the property is taken in the valid exercise of the taxing power, the owner is not deprived of it 'without due process of law,' within the meaning of the prohibitions on that subject contained in the State and Federal Constitutions. McMillen vs. Anderson, 95 U. S. 40; Davidson vs. New Orleans, 96 U. S. 97.

" There are, however, certain requirements absolutely es-

sential to constitute a valid exercise of the taxing powers, without which no tax sale could be validly made. The chief of these indispensable prerequisites are—

"1. That a tax has been levied.

"2. That the property sold is subject to taxation.

"3. That the property has been assessed.

"4. That the taxes had not been paid.

"5. A statutory warrant for the sale.

"6. A sale made under such warrant.

"Any statute authorizing the sale of a man's property for taxes which had not been levied, or where the property was exempt from taxation, or where the property had not been assessed, or where the taxes had been duly paid, would unquestionably be a taking in excess and outside of the taxing power, and such taking would not be with 'due process of law.'

"So any statute which should attempt to cure such substantial defects, or should attempt to debar the owner from proving, in defence or assertion of his rights, that a pretended tax sale was wanting in any of these essential prerequisites, would violate the constitutional prohibition and could not be enforced.

"But outside of these fundamental and *quasi*-jurisdictional requirements, and with reference to the time and manner in which the tax proceedings shall be conducted, the legislative discretion is supreme and can not be judicially controlled.

"As the Legislature may, in advance, prescribe and direct the time and manner in which these shall be done, it may likewise provide that failure to comply with such directions shall not defeat the sale, and may constitutionally provide that the tax deed shall be conclusive evidence that such directions were complied with, as to time, manner and every other matter originally within the legislative discretion.

"Broadly stated, the doctrine is that the Legislature may make the tax deed conclusive evidence of compliance with every requirement which the Legislature might, originally, in the exercise of its discretion, have dispensed with.

"As stated by Judge Cooley:

"'The general rule has often been declared that the Legis lature may validate, retrospectively, the proceedings which they might have authorized in advance.' Cooley on Taxation, p. 229.

"He states certain exceptions, however, to the general rule, which have no application in the instant case.

"This doctrine is supported by a vast mass of authority: Allen vs. Armstrong, 18 Iowa, 510 to 515; Rema vs. Cowan, 31 Iowa, 125 to 128; Bulkly vs. Callahan, 32 Iowa, 461 to 466; Clark vs. Thompson, 37 Iowa, 539; Easton vs. Perry, 37 Iowa, 682 to 683; Phelps vs. Meade, 41 Iowa, 470 to 474; Jackson vs. Morse, 18 Johnson, 441–3; Assurance Co. vs. Board, 24 Barbour, 166 to 169; Stewart vs. Schoenfeldt, 13 Serg. and Bawle, 360 to 381; Hubley vs. Keeper, 2 Penn. (Penrose & Watts), 501 to 502; Peters vs. Heasley, 10 Watts, 209; 18 How., U. S., 275, 281 to 285; Thomas vs. Lawson, 21 How. 341 to 342; Callahan vs. Hurley, 93 U. S. 387 *et seq.;* De Treville vs. Small, 98 U. S. 517 to 528; Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, 99 U. S. 497; 102 U. S. 586 to 602, Springer vs. U. S.; 17 Wisconsin, 563 to 565, Smith vs. Cleveland; 23 Wisconsin, 617–8, Huey vs. Van Wie."

"The Supreme Court of the United States, in commenting on an Iowa statute, identical with Act 82, said: "The whole act exhibits an intention of the Legislature to enforce the payment of taxes by securing purchasers at tax sales in their purchases, and thus making it dangerous for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of establishing tax titles, and at the same time it works no injustice to owners of land subject to taxation." Callahan vs. Hurley, 93 U. S. 387.

"In a like case the same court said: 'The statute left to the owner of the lands every substantial right. It was his duty to pay the tax when it was due. His land was charged with it, and the proceedings ending in the sale was simply a mode of compelling the discharge of his duty. All his substantial rights were assured to him by the permission to show that he

owed no tax; that his land was not taxable; that he has paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * * There is no possible excuse for not enforcing such statutes according to their letter and spirit.' De Treville vs. Smalls, 98 U. S. 517.

"In a Pennsylvania case Ch. J. Tilghman said, in supporting a similar statute: "One can not without pain see a man divested of his property in a tract of 400 acres for a tax of less than $4. But if landholders will pay no attention to taxes, what is to be done? It must be presumed that every man knows the land he owns, and knows that taxes are imposed upon it annually, and sales made of the lands, the taxes on which are unpaid. It is within his own knowledge, too, that he has not paid them, and has thus been guilty of a breach of duty." Stewart vs. Schoenfeldt, 13 Serg. & R. 360.

"Nothing is urged against the sale in this case which was not urged in Lake's case.

"It is not pretended that the proceedings were lacking in any of the essential requirements above referred to.

"The only complaint is of certain irregularities in the assessments in non-compliance with the special requirements of the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential. Cooley on Taxation, p. 282. If the proceedings had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute was intended and was competent to heal." In the matter of Douglas, 41 La. An. 765.

In the Lake case, 40 An. 148, the Court said: "In the effort to enforce this ordinance, the Legislature passed Act No. 107 of 1880, and subsequently Act No. 98 of 1882, but great difficulty was experienced in giving good and sufficient titles to property sold under them, and the State was thereby

deprived of this source of revenue to a great extent; hence the passage of Act No. 82 of 1884 became a necessity. It deals exclusively with the *proceedings* necessary to effectuate sales of such property as are subject to such delinquent taxes and the execution and effect of tax titles evidencing such sales. It is a remedial law, authorized by the terms of said ordinance. * * * That such proceedings as those provided by this act constitute 'due process of law,' in the sense of the Constitution, has been so often decided that it may be classed as an elementary principle in matters of taxation. * * *

"The objection made to the effect that the Legislature was without power to pass a law declaring that a tax title shall be conclusive evidence, as provided in the act under discussion, has been virtually disposed of already, as we have ascertained that it has no reference to essential jurisdictional prerequisites. We think the law is constitutional, and the exception of no cause of action should have been sustained."

The cases of Lake and Douglas are the leading cases on this act, and the opinions of the Court in those cases demonstrate conclusively that the act is not liable to the objections leveled at it. The Court has held distinctly that with proper allegations tax debtors could attack the sale of property under this act, and that they were at liberty to show the absence of any of the essential jurisdictional prerequisites, but that as to non-essentials the Legislature could make the act of sale conclusive evidence.

In the Lake case it is said (40 An. 146): "Precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds conclusive as to the *non-essential* prerequisites, but the exercise of legislative power has never been sanctioned so as to make such deeds conclusive as to essential prerequisites. * *

"Do we understand that the statute under consideration makes a tax title conclusive as to either? No. What is meant by the phrases: 'That the property was assessed *according to law?* That the taxes were levied *accord-*

ing to law? That the property was advertised *according to law?* That the property was adjudicated and sold as stated in said deed?'

"Do they not necessarily imply that all these essentials had been fulfilled, and that the tax title is only made *conclusive evidence* that, if performed, they have been performed according to law? Does it not follow as a legal sequence that, as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed in the name of John Boylan, it is precluded by the deed, because *it* furnishes conclusive evidence of the correctness of the assessment if made at all? It would seem so."

In the Douglas case (41 An. 769) the Court used the following language: "The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements with the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential." Cooley on Taxation, p. 282: "If the proceeding had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute intended, and was competent to heal."

It is not alleged herein that there was no assessment at all, but, as in the Lake case, that the property *was* assessed but assessed in the wrong name. We think we have shown the assessment to have been correct, but even if the name was wrong, which we do not for a moment admit, we hold that such defect was healed by the curative statute; as was decided in Lake's case.

We maintain that it was within the power of the Legislature, under the command of the constitutional ordinance, to pass such a law as would validify, so far as sales under that law are concerned, an assessment in the name of one other than the owner of the property. It is settled, and was so decided in the Douglas case (41 An. 768), that "broadly stated the doctrine is, that the Legislature may make the tax

deed conclusive evidence of compliance with every requirement, which the Legislature might, originally, in the exercise of its discretion, have dispensed with."

Mr. Cooley in his work on Taxation, pp. 305 and 306, says: "The general rule has often been declared that the Legislature may validate retrospectively the proceedings which they might have authorized in advance. Therefore, if any directions of the statute fail of observance, which are not so far of the essence of the thing to be done that they must be provided for in any statute on the subject, the Legislature may retrospectively cure the defect."

If this is sound doctrine as to the general power of the Legislature, how much stronger is the reasoning when we have a constitutional mandate to the Legislature ratified by a vote of the people of the State to enact a law under which "complete" titles can be had?

It is well recognized that it is within the legislative discretion to tax property as such, and without regard to the name of the owner. It is done every day, and our own statutes provide—the last one being Act 85 of 1888—that it shall be the duty of the assessor (see Sec. 18) "to assess the same in the name of the owner, *except in case of unknown owners.*"

Here we have the property of unknown owners assessed simply as property. There is unquestionably an owner somewhere, but as he is "unknown" the property itself is made to contribute the amount of its tax, and in default of some one paying the tax it is sold for same in the manner provided by law.

This subject has been considered by Mr. Cooley, and in a note on page 399 we find that "under the Indiana statute an assessment is not void because not made in the name of the owner." And in the case of Thompson et al. vs. Lessee of Carroll et al., reported in 22 Howard, p. 433, the Court says: "Without inquiring whether this act repeals the 12th section of the previous act by implication, it shows plainly that the property assessed is considered as primarily liable for the tax, without regard to ownership * * * It is not necessary to the validity of the assessment and sale of the property taxed that the name of the true owner be ascertained."

In Witherspoon vs. Ducan 4th Wallace, 217, Mr. Justice Davis, as the organ of the Court, said: "It is not the policy of this Court to interfere with the revenue laws of the States, nor with the interpretation given to them by their Courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes."

"Of course, the property must, under the compact, be taxable; but if it is, the mode of enforcing the payment of taxes is wholly within legislative control."

Therefore it is, we say, that the assessment of the property in the name of the owner, or without regard to that name, is a matter within the original discretion of the law-making power. It is not an indispensable jurisdictional prerequisite. This being so, and an assessment in the name of the owner not being essential to the exercise of the taxing power, an assessment in a wrong name comes legitimately within the purview of the healing statute, and may, by it, be retrospectively validified, and the deed made conclusive evidence of the correctness of such an assessment.

The Legislature, then, in providing that the tax deed shall be conclusive evidence of the performance *according to law*, if performed at all, of certain duties, which could originally have been dispensed with, has acted within the recognized scope of its authority, and the proceedings authorized by it constitute that "due process of law" referred to in the Constitution. In Murray's Lessee vs. Hoboken Land Co., 18 Howard, 272, the Court exhaustively reviewed this subject, and, in the course of its opinion, said: "For though 'due process of law' generally implies and includes *actor, reus, judex*, regular allegation, opportunity to answer and a trial according to some settled course of judicial proceedings (authorities), yet this is not universally true. There may be, and we have seen that there are cases, under the law of England after *Magna Charta*, and as it was brought to this country

and acted on here, in which process, in its nature final, issues against the body, lands and goods of certain public debtors without any such trial."

"The power to collect and disburse revenue, and to make all laws which shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the Constitution * * * and whoever may have possession of the public money, until it is actually disbursed, the power to use those known and appropriate means to secure its due application continues. * * * It may be added, that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

The distinction between "due process of law," as referring to ordinary matters of controversy between individuals, and matters of taxation, is marked, and the right of the government to proceed in a summary manner to collect its taxes is too well recognized to require argument. This Court held in McMillen vs. Anderson, 95 U. S. 37, that "a right to enjoin the proceedings, whereby the validity of the tax may be adjudicated, is due process of law."

And it has also been held that "notice by statute (publication) is generally the only notice given, and that has been held sufficient." Kentucky Railroad cases, 115 U. S. 321, quoting and approving 96 U. S. 97, 95 U. S. 37, 92 U. S. 575, 103 U. S. 370, 14 C. B. (U. S.) 180. Baker's Annotated Constitution, 216 and 217.

In endeavoring to establish the unconstitutionality of this act, counsel quotes freely from Saunders on Taxation, a Louisiana authority. The writer appreciates Mr. Saunders'

ability and judgment, and recognizes that any proposition to which he gives his assent has an earnest and conscientious advocate. But in this instance, Mr. Saunders' argument lacks the support of authority. It is but justice to that writer to say that his book was published in 1887, and that the decision in the Lake case, the first case decided under the act of 1884, was not handed down until 1888, fully a year after Mr. Saunders wrote. That case was followed by a line of decisions which have uniformly affirmed its doctrines. Mr. Saunders' views have several times been pressed upon the Supreme Court of the State with great earnestness, but in view of the thorough research which has been given to this question since he wrote, the Court has consistently declined to endorse his conclusions. Mr. Saunders has never been regarded as being self-opinionated, and it may well be doubted whether he would, to-day, after the repeated decisions of the Court, attempt to maintain the position assumed by him before those decisions were rendered. It should be remembered that when he wrote, the statute was unconstrued, and he had not the benefit of the Court's analysis, while the Court when interpreting the act was in full possession of all he had written.

Plaintiff in error bases his claim that the Louisiana statute of 1884 is unconstitutional largely, if not entirely, upon the decision of this Court in the case of Marx vs. Hanthorn, reported in 148 U. S. 172 to 185.

As we understand the Marx vs. Hanthorn case, this Court merely adopted the views of the Oregon Supreme Court in construing an Oregon statute; and that is what we contend the Court should do in construing the Louisiana Constitution and statute.

In our view Marx vs. Hanthorn does not bear out the contention of plaintiff in error. There is a material varianec between the Oregon statute and the Louisiana law. As stated in the Court's opinion the Oregon statute provided "all the proceedings required or directed by law in relation to the levy, assessment and collection of the taxes and the sale of the property shall be presumed regular, and to have

been done in accordance with law, and such deed shall be *prima facie* evidence of title in the grantee, and such presumption and such *prima facie* shall not be disputed or avoided, except by proof of either;" (one of four things.) In the course of its opinion the Court said: "The Legislature can not deprive one of his property by making his adversary's claim to it, whatever that claim may be, conclusive of its own validity, and it can not, therefore, make the tax deed conclusive evidence of the holder's title to the land."

This is precisely what the Louisiana law does not do.

Act 82 of 1884 provides that a "copy of which deed shall be *prima facie* evidence of the following facts: 1st. That the property conveyed was subject to taxation. 2d. That none of the taxes for which said property was offered were paid, and said deed shall be conclusive evidence of the following facts: 1st. That the property was assessed according to law. 2d. That the taxes were levied according to law. 3d. That the property was advertised according to law. 4th. That the property was sold and adjudicated as stated in said deed, and 5th. That all the prerequisites of the law were complied with by all the officers, from the assessment up to and including the execution and registry of the deed to said purchaser."

Observe the difference between the two laws. The Oregon statute prohibited the introduction of any evidence upon any point save the four named. The Louisiana law throws the door wide open as to all points except those named, and as to them, merely provides that upon the production of the deed the duties named shall be presumed to have been performed *according to law*, if performed at all. The tax debtor has his right reserved to show that they have *not* been performed, and if he can do so he defeats the sale. This was expressly decided in Lake's case, cited *supra*. See also Augusti vs. Lawless, 45 An. 1370; Edwards vs. Fairex, 47 An. 172.

In what way then does this statute deprive plaintiff in error of his property without due process of law? Is he not permitted to come into Court and show that his property was not assessed, or that his taxes were paid, or the property was not advertised for sale, or that the tax was not levied? Is

there any matter of real substance which he is prohibited from showing under proper allegations? "All his substantial rights were assured to him by the permission to show that he owed no tax; that his land was not taxable; that he had paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * There is no possible excuse for not enforcing such statutes according to their letter and spirit." De Treville vs. Smalls, 98 U. S. 517. Such was the language of this Court, and its application to the case at bar is peculiarly striking. Under the record, as made up in this case, we can not see wherein the tax debtor has room for complaint.

As we have already shown and as was demonstrated in the able opinion of Judge Fenner in the Douglas case, statutes of similar import have been sustained in this Court. The Marx vs. Hanthorn case, upon casual reading, might suggest the departure of the Court from the ancient rule, but we submit that a careful analysis of that decision will show that the Court merely followed its well established rule of following the State courts in construing State laws and constitutions. On page 184, the Court, in speaking of the question of notice, said: "These questions have been determined, so far as the laws and constitution of Oregon are concerned, by a recent decision of the Supreme Court of that State in the case of Strode vs. Washer," (17 Oregon, 50). Again, upon the same page, speaking of the power of the Legislature to regulate the evidential effect of the tax deed, and referring to the same decision, the Court said: "This decision was not made until after the trial of the present case (Marx vs. Hanthorn) in the Circuit Court of the United States; but in the absence of any previous decision of the Supreme Court of Oregon to the contrary, we regard it as a conclusive construction of the meaning and effect of the State statutes in question."

The objection raised by counsel that the act is violative of the 29th Article of the State Constitution, providing that each legislative enactment shall have but one object, has been

repeatedly decided against the contention of plaintiff in error. So also has his objection to the form of notice required, as being violative of Article 210 of the State Constitution, prescribing notice other than by publication for taxes accruing under the Constitution; as well as the healing effect of the statute upon the assessment of the property. In deciding this case, the Louisiana Supreme Court said (R., p. 85): "The question of the competency of this legislation in this respect has been before this Court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this Court. To those decisions we must adhere, and hold the act precludes the inquiry. In the matter of Orloff Lake, 40 An. 142; *In re* Douglas, 41 An. 765; Breaux vs. Negrotto, 43 An. 43, *et seq.*"

"It is urged on us that the property not forfeited to the State prior to 1879 could not be sold without the notice specified in Article 210 of the Constitution. That article applies manifestly to sales for taxes levied since 1879. Sales of property for taxes prior to 1879 are governed by the ordinance for the relief of delinquent taxpayers and by the act of 1884, prescribing newspaper notice. In this case the advertisement gave the full name of plaintiff, adding her estate or heirs, and in our view the advertisement conformed to the requirements of the act."

This extract shows that assignments of errors Nos. 2 and 3 are totally unfounded. Proper advertisement was had and notice was given. The Court so held.

Assignment No. 5 has properly no place in this litigation. The question can not arise herein, as even if that provision were not in the act, its absence would not benefit plaintiff in error. The record shows (p. 29) that the amount, exclusive of interest and costs, due to the State for taxes upon this property for the years for which it was sold, was $38.50, and that the price paid to the State for same was $35, together with the assumption of all other taxes due. It thus appears that the State did not realize all that was due her, and that there was no surplus for the tax debtor to claim. But even

supposing that this Court shall decree said portion of the act null, although the question does not apply to and can not affect this case, the position of plaintiff in error will not be improved, as the nullity of that section will not strike with impotence the other provisions of the law.

As stated by the Louisiana Supreme Court in the Douglas case, 41 An. 770: "In conclusion we have not held that every feature of Act 82 is constitutional.

"In the application of such statutes it is well settled that they are to be enforced in so far as they do not violate the constitutional rights of the citizen as property owner, and restrained in so far as they do violate them." Allen vs. Armstrong, 16 Iowa, 510; McCready vs. Sefton, 29 Iowa, 356; Rinea vs. Cowan, 31 Iowa, 125, and other cases heretofore cited.

"Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the Courts to declare the remainder void also. * * * If when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." Cooley's Constitutional Limitations, 4th Ed., pp. 215, 216.

We have shown that the complaint of plaintiff in error is simply as to non-essentials, and that even that complaint is unfounded. Therefore his sixth assignment falls. The authorities are conclusive, that "the Legislature may validate retrospectively the proceedings which they might have authorized in advance. Therefore if any directions of the statute fail of observance, which are not so far of the essence of the thing to be done, that they must be provided for in any statute on the subject, the Legislature may retrospectively cure it." Cooley on Taxation, 306.

"It is no doubt true that there may be provisions of tax laws that are made in the interest of the public, and which do not concern the taxpayer; and a failure to punctiliously observe them may furnish him with no ground of complaint." Marx vs. Hanthorn, 148 U. S. 180.

The fourth assignment of error deals entirely with the alleged conflict between the tax law and Art. 29 of the State Constitution, and as this point has been repeatedly decided by the State Supreme Court, it may, in the language of that tribunal (see Record, p. 85), be said that "the interpretation we announce can not be deemed open."

The Constitution of Louisiana, like the fourteenth amendment to the Federal Constitution, contains in Art. 6 the provision that no person "shall be deprived of life, liberty or property without due process of law." The expression has the same meaning and application in both instruments. "In some form of words it is to be found in each of the State Constitutions; and though verbal differences appear in the different provisions, no change in language, it is thought, has in any case been made with a view to essential change in legal effect. * * * And by the fourteenth amendment, the guarantee is now incorporated in the Constitution of the United States." Cooley's Constitutional Limitatioms, 4th Ed., pp. 436 and 437.

The decisions interpreting and applying the act of 1884 show that this clause was given full consideration and the reasons stated in those cases have as much application to one instrument as they have to the other.

We maintain that there is no conflict between the Louisiana tax statute and the Federal Constitution. And specially that no issue of the kind was decided by the State Supreme Court. That tribunal decided the case upon its own accepted and uniform construction of the State Constitution and laws, as laid down in a series of cases, and its interpretation of said Constitution and laws, having by continuous application been crystallized into *rules of property*, upon which large vested rights are founded, this Court will not now disturb the same; but adhering to its own settled jurisprudence, will hold that the construction of those laws by the State Court will be followed by this Court.

The following extract from the decision of this Court in Burgess vs. Seligman, 107 U. S. 20, is especially clear upon this point, to-wit:

"The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of the State Courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative decisions of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment, as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or where there has been no decision of the State tribunal, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean toward an agreement of view with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunal, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well considered decisions of the State courts. As, however, the very object of giving to the national courts

jurisdiction to administer the law of the State in controversies between citizens of different States was to institute independent tribunal, which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment *in cases not foreclosed by previous adjudication.*" The American Law Register and Review, 186; (the italics are not ours).

Upon this subject Mr. Cooley says:

"But the same reasons which require that the final decision upon all questions of national jurisdiction should be left to the national courts, will also hold the national courts bound to respect the decisions of the State courts upon all questions arising under the State Constitutions and laws where no question of national authority is involved, and to accept those decisions as correct, and to follow them whenever the same questions arise in the national courts." Cooley Constitutional Limitations, 4th Ed., 16.

In his note to the above Mr. Cooley quotes a cloud of authorities sustaining the proposition; among others Green vs. Neal's Lessee, 6 Peters, 291, where he says: "An important question was presented as to the proper course to be pursued by the Supreme Court of the United States, under somewhat embarrassing circumstances. That Court had been called upon to put a construction upon a State statute of limitations, and had done so. Afterward, the same question had been before the Supreme Court of the State, and in repeated cases had been decided otherwise. The question now was whether the Supreme Court would follow its own decision, or reverse that in order to put itself in harmony with the State decision. The subject is considered at length by McLean, J., who justly contends that 'adherence by the Federal to the exposition of the local law, as given by the Courts of the State will greatly tend to preserve harmony in the exercise of the judicial power in the State and Federal tribunals. This rule is not only recommended by strong considerations of propriety, growing out of our system of jurisprudence, but it is sustained by principle and authority. The Court accord-

ingly reversed its rulings to make them conform to those of the State Courts.' "

In conclusion we desire to call the special attention of the Court to the following pertinent language used by the Supreme Court of Louisiana in deciding this case (see Record, p. 85): "In all aspects of the case we think the defendant's title is protected by a line of decisions that no court should deem itself at liberty to overthrow, especially as they are based upon that provision of our organic law dealing with the subject of long deferred taxes left still unpaid after the liberal grace extended the owner by the ordinance."

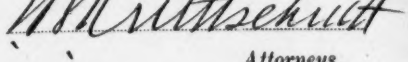
This is a fitting conclusion to the decision, and announces the settled determination of the Court to uphold by its judgment the acts of the officers of the State in all cases where those acts conform to the law; but at the same time the same court has not hesitated to declare null all adjudications under this law in which the issues presented involved a disregard of the elements essentially necessary to the valid exercise of the taxing power. Walsh vs. Harang and Husband, 48 An. 984; Augusti vs. Lawless, 45 An. 1370.

We therefore respectfully submit, first, that this case should be dismissed for want of jurisdiction on account of the failure of plaintiff in error to present the Federal question relied upon at the proper time and in the proper manner. And second, if we are wrong in this regard, that the decision of the State Supreme Court should be affirmed upon the ground that there is no conflict between the Federal Constitution and the Louisiana tax statute under which the sale was made.

Further, that this Court will not interfere with a State government in the orderly exercise of its taxing power; and finally that the facts presented in the record show conclusively that in this case all of the acts of the officers charged with executing the laws of the State were properly and legally performed, and the sale of the property of plaintiff in error for the taxes stated, operated an orderly and legal divestiture of title.

We therefore ask that the writ be dismissed, and that the judgment of the Supreme Court of the State of Louisiana rendered herein be maintained and affirmed.

RICHARD HENRY LEA,
THOMAS H. THORPE,



Attorneys.

No. 307.

Supreme Court of the United States

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTILLO,

PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO,

JOHN H. LANG,

HORACE C. REESE,

AND

WILLIAM H. FITZPATRICK,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on behalf of John H. Lang, Defendant in Error, on the motion to dismiss.

May it please your Honors:

The motion to dismiss is made on the following grounds, to-wit:

"That the allowance of the said writ of error is not justified by any law, for the reason that it does not appear from the record of this case or from any proceedings had

therein that there was drawn in question in this case the validity of any treaty or statute of, or an authority existing under the United States, or that there was drawn in question the validity of a statute of, or an authority existing under, any State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States; or that any title, right, privilege, or immunity was claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States.

"And on the further ground that in fact none of the above mentioned questions were raised in this case."

The rule seems to be now well settled, as stated in the case of Crowell vs. Randell, 10 Peters, 391:

"That to give this Court appellate jurisdiction *two* things should have occurred and be apparent in the record: first, that some one of the questions stated in the section did arise in the Court below; and secondly, that a decision was actually made thereon by the same Court, in the manner required by the section. If *both* of these do *not* appear on the record, the appellate jurisdiction fails. It is *not* sufficient to show, that such a question *might* have occurred, or such a decision *might* have been made in the Court below. *It must be demonstrable, that they did exist, and were made.* The principal, perhaps the only important difficulty, which has ever been felt by the Court, has been in ascertaining in particular cases, whether these matters (the question and decision) were apparent on the record. And here the doctrine of the Court has been, that it is not indispensable, that it should appear on the record, in *totidem verbis*, or by direct and positive statement, that the question was made and the decision given by the Court below on the very point; but that it is sufficient, if it is clear, from the facts stated, by just and necessary inference, that the question was made, and that the Court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question, as *indispensable* to that judgment." (Italics ours.)

It also seems well settled that, "The conflict of the State law with the Constitution of the United States, and a decision by a State Court in favor of its validity, must

appear on the face of the record before it can be re-examined in this Court. It must appear in the pleadings of the suit, or from the evidence in the course of the trial, in the instruction asked for, or from exceptions taken to the ruling of the Court. It must be that such question was unecessarily involved in the decision, and that the State Court would not have given judgment without deciding it." R. R. Co. vs. Rock, 4 Wall., 180; Lawton vs. Walker, 14 Howard, 149; Mills vs. Brown, 16 Peters, 525.

It is likewise settled, that the opinion of the State Court constitutes no part of the record, and cannot be looked to as the foundation on which this Court will take or refuse jurisdiction. Rector vs. Ashley, 6 Wall., 148; Williams vs. Norris, 12 Wheaton, 117; Gibson vs. Chouteau, 8 Wall., 314; Kennebec R. R. vs. Portland R. R., 14 Wall., 25.

Nor will this Court have or take jurisdiction, if the judgment of the State Court *may* or *might* have been given on grounds which the law does not make cause of error. Kennebec R. R. vs. Portland R. R. *supra.*

It must be such a question as was necessarily involved in the decision, and that the State Court would not have given judgment without deciding it; and the cause for jurisdiction must appear *aliunde* the certificate of the State Court. Parmelee vs. Lawrence, 11 Wall., 38.

Having these principles in view, it seems clear to our mind that this Court is without jurisdiction, for it no where appears in any portion of the record that the alleged repugnancy of the State Statute to the Federal Constitution was at all drawn in question. The petition of the plaintiff in the case, (who is also the plaintiff in error,) merely sets out his alleged ownership to the property in controversy and the sale for taxes and subsequent transfers to the defendants in error. He also alleges their nullity, but no where does he attack the statute as being unconstitutional. Neither is the Federal question raised in any of the answers filed

by the respective defendants in error. On the contrary, that question seems to be entirely omitted from all of the pleadings in the case.

It will be observed that the record shows that *other matters were alleged* in the pleadings, upon which the State Court could clearly base its opinion and decree. For instance, the defendants, W. H. Fitzpatrick and H. C. Reese, set up a plea of estoppel. Lang, another of the defendants, also sets up a plea of estoppel, and makes the additional allegation that the plaintiff cannot maintain his suit, or recover judgment, because, as alleged by Lang, the property in controversy was sold to the State of Louisiana for taxes for the years 1880, 1881, 1882, and 1883, being for years *different* from those for which the property was sold under the statute which is directly attacked by the plaintiff, and under different and distinct laws of the State. Lang makes the further allegation that, in addition to the title under Act 82 of 1884, which is attacked by plaintiff, he redeemed the property from the State and acquired all the interests of the State which was conveyed by the sales for the said taxes of 1880 to 1883 inclusive. All of the defendants plead the general denial and set up and plead prescription to the suit or action of plaintiff, and they also plead the exception of no cause of action.

Reference to the record will demonstrate that a large amount of evidence was taken on the various issues thus raised by the pleadings, but it nowhere appears therefrom that a federal question was even referred to.

It will therefore readily be seen, that not only does the record not show that the federal question was directly raised or passed upon, but, on the contrary, the record shows affirmatively that *other questions* were raised and that the Court could well and, we urge, did, as a matter of fact, rest its opinion upon the other questions raised by the

pleadings and in the evidence, and did *not* take up or decide the alleged federal question referred to in the specifications of error.

Even if the Court should look to the opinion in this case, we earnestly and confidently urge that it will not appear therefrom that any federal question was raised or decided. It will be seen from the opinion of the State Court that the only constitutional question which was passed upon, or referred to, was the alleged conflict with the State Constitution, and that following the numerous previous decisions on the same point, the Court held that there was no conflict. But this is a question of which this Court has no jurisdiction, and with the decision of which your Honors will not interfere.

Having in view the settled jurisprudence of the State on the competency of the legislation under discussion, as shown by the number of cases referred to in the brief on behalf of this defendant in error on the merits, and also having in view the statement of the State Court in its opinion, that the argument addressed to the Court against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of the State Court to which the Court declares it must and does adhere, and the further statement by the Court that the defendant's title is protected by a line of decisions that no Court should deem itself at liberty to overthrow, it seems to us, that we can safely invoke the rule laid down and enforced in the cases of Bank vs. Bank, 14 Wall, 9; Palmer vs. Marston, ibid., 10; and Sevier vs. Haskell, ibid., 12, that: "Where a decision of the highest Court of the State in a case is made on its settled pre-existent rules of general jurisprudence, the case cannot be brought here under the twenty-fifth section; notwithstanding the fact that the State has subsequently made those rules one of the articles of its

Constitution, [or enacted them in a statute] and the case be one where, if the decision had been u[illegible] on the Constitution [or statute] *alone*, a writ of error under the said section might have lain," and ask that the writ of error be dismissed on that ground.

It would therefore seem that viewed from any standpoint, this Court has no jurisdiction, that the writ of error was not justified, and that it should, therefore, be dismissed.

Respectfully submitted,

J. ZACH. SPEARING,

Att'y for J. H. Lang, Defendant in Error.

New Orleans, April, 1897.

No. 307.

Supreme Court of the United States

OCTOBER TERM, 1896.

RAFAEL MARIA DEL CASTELLO,

PLAINTIFF IN ERROR,

vs.

WALTER L. McCONNICO,

JOHN H. LANG,

HORACE C. REESE,

AND

WILLIAM H. FITZPATRICK,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on behalf of John H. Lang, one of the Defendants in Error.

May it please your Honors:

The statute which is charged in this case with being unconstitutional is known as Act No. 82 of the Session of the Legislature of the State of Louisiana for the year 1884, and so much of the statute as is applicable to the case at bar is as follows, to-wit:

No. 82. AN ACT

"To provide for the sale of property bid in for and adjudicated to the State, and of property on which taxes are due the State prior to December 31st, 1879; to regulate in what manner said sales are to take place; to provide for the payment and cancellation of all encumbrances, and of all taxes due prior to December 31st, 1879; to establish the validity of sales made in compliance herewith; to provide for the payment of costs incurred under this Act, and for the payment of unpaid costs incurred in advertising and offering for sale immovable property to enforce the payment of taxes, which were due to the State prior to December 31st, 1879; and to provide how the payment into the State Treasury shall be made of money realized to the State from the enforcement of this Act.

"*Whereas*, under the provisions and terms of Act No. 98, of 1882, approved July 5th, 1882, and of laws in force, certain property has been offered for sale to enforce the payment of delinquent taxes due the State prior to December 31st, 1879; and,

"*Whereas*, at said sales, for want of a bid sufficient to pay the taxes due, a large quantity of property was bid in for and adjudicated to the State, by which adjudications the State has become possessed of a vast amount of real estate, but which is encumbered with unpaid delinquent taxes for many years, far exceeding in many instances the value of the property, and,

"*Whereas*, great difficulties have hitherto been experienced in giving good and sufficient titles to property sold for taxes, which fact has kept, and is keeping, such property out of market, thereby depriving the State of all present and future revenue from the same;

Section 1. "*Therefore be it enacted by the General Assembly of the State of Louisiana*, That it shall be the duty of each tax collector, and *ex-officio* tax collector, to immediately advertise for sale, at public auction, all property which has heretofore been or which may hereafter be bid in for the State, under the provisions of existing laws, and all property on which there remain unpaid taxes due the State prior to December 31st, 1879; that all such property shall be advertised, three times in thirty days, and in English only, the last advertisement to occur on the day on which said property is advertised to be sold. Such advertisements shall be full and sufficient notice to all per-

sons interested, and no other notice shall be required. The property shall be advertised by a description only sufficient to identify, describe or deliver the property. Such advertisements shall contain the name of the party in whose name the property was assessed, or the name of the present owner of the same, and said advertisements must designate the time and place of offering. If the sales advertised to take place on a specified day are not completed on said day, the same shall be continued over from day to day until the same are completed. In advertising said property for sale, the tax collector may include between one general heading and one general conclusion several pieces of property.

Section 2. *Be it further enacted, etc.*, That said property shall be adjudicated and sold to the last and highest bidder, for cash. All bids made may be paid in any lawful money of the United States, or in any warrant, bond or other obligation which by the laws and Constitution of the State is made receivable for taxes and licenses due the State prior to January 1st, 1879, except the costs incurred in adjudication to the State and in sales under this Act, and the commissions and fees established by this Act, which shall be paid by preference and in current money. All money realized to the State from the enforcement of this Act, which is required by the Constitution to be paid into the State Treasury to the credit of the outstanding obligations of the State and interests thereon, shall be so paid; but all such money which is not so required to be so paid, shall be paid into the State Treasury, to the credit of the Current or Free School Fund.

Section 3. "*Be it further enacted, etc.*, That each tax collector and *ex-officio* tax collector shall, as soon as said adjudications to bidders are made and complied with, execute to each purchaser a deed of sale in the name of the State, of each specific piece of property, before a duly qualified Notary Public by authentic Act, to be by him selected, a duly certified copy of which deed shall be *prima facie* evidence of the following facts: 1st. That the property conveyed was subject to taxation. 2d. That none of the taxes for which said property was offered were paid, and said deed shall be conclusive evidence of the following facts: 1st. That the property was assessed according to law; 2d. That the taxes were levied according to law; 3d. That the property was advertised according to law; 4th. That the property was adjudicated and sold

as stated in said deed; and, 5th. That all the prerequisites of the law were complied with by all the officers from the assessment up to and including the execution and registry of the deed to said purchaser; and duly certified copies of said deeds shall be full proof without further evidence of all contained therein. If only a portion of the taxes for which the property is sold are proved to have been paid, the sale and the title to the purchaser shall, nevertheless be good and valid, the same as if all the taxes for which it is sold had not been paid.

Section 4. *Be it further enacted, etc.*, That all the sales under this Act shall vest in the purchaser an absolute and perfect title to the property conveyed without redemption, and it shall be the duty of any Court having jurisdiction of the value of property sold to issue an order to the sheriff, upon representation of a duly certified copy of the deed, commanding him to forthwith seize the property described in said deed; and after three days' notice of such seizure, to either the former owner or the occupant of said property, the sheriff shall put the purchaser into actual possession of the property, unless enjoined by a Court having jurisdiction of the property. If the property is vacant it shall only be necessary for the sheriff to post, for one week in some conspicious or usual place, a copy of the notice of seizure, after the expiration of which delay, unless enjoined, he shall put the purchaser into possession. In case the State shall fail to give to the purchaser an absolute title to the property sold, or if said title shall be duly declared null and void for any cause, the amount paid by the purchaser to the State for such property shall be refunded by the tax collectors to the purchaser.

Sec. 5. *Be it further enacted, etc.*, That the price bid and paid for said property shall be in full and final payment and satisfaction of all State, City, Parish and Municipal taxes due on same prior to December 31st, 1879, together with all interests, costs and charges, on the same, and the recordation of the deed of sale, or of a duly certified copy of the same in the mortgage office, shall operate as a cancellation of all conventional, legal and judicial mortgages, and of all taxes, tax liens, tax privileges and tax mortgages due prior to December 31st, 1879, with all interest, costs and charges thereon on the property sold. If the price paid for said property is not sufficient to pay in full all costs and charges herein set forth and the taxes due prior to Debember 31st, 1879, with interests, costs and

charges thereon due by said property, then the price after the payment of the costs and charges herein provided to be first paid, shall be divided and distributed proportionately to the payment of all unpaid State, City, Parish and Municipal taxes, interests, costs and charges due on, or by the property prior to December 31st, 1879. The purchaser shall however assume and promise to pay, and shall take said property subject to all unpaid taxes on the same due subject [subsequent] to December 31st, 1879. The balance remaining of the price of the said sales, after the payment of all the costs and charges herein provided to be paid of all unpaid taxes due prior to December 31st, 1879, shall be paid into the State Treasury, as herein provided.

This statute was passed pursuant to and by virtue of an article contained in the present Constitution of the State of Louisiana, adopted in 1879. The article referred to is one of the "Miscellaneous Ordinances" of that Constitution and was passed for the relief of the then delinquent tax payers, and is as follows, to-wit:

"Article 1. *Be it ordained by the people of the State of Louisiana in Convention assembled*, All interests, penalties, costs, fees and charges whatever on taxes and licenses due the State, or any political corporation therein, prior to the first day of January, 1879, and yet unpaid, are remitted, and all property forfeited to the State or any political corporation, on account of non-payment of taxes and licenses, or to which the State or any political corporation now has a title, shall be redeemable, and the title to the State or any political corporation thereto annulled upon the payment by the debtor, or any interested party, of the principal of all taxes and licenses that may be due thereon at the date of redemption, and this right of redemption shall continue until the first day of January, 1881. In the event the principal of said taxes and licenses is not paid by said time the interest, penalties, costs, fees and charges hereinbefore remitted shall revive and attach to the property upon which the taxes and license are due, and such property shall be then sold in the manner to be provided by law, and the title of the purchaser shall be full and complete; *provided*, that nothing herein contained shall be construed as affecting the rights of third persons who may have purchased property, legally assessed and sold at tax sales, or from the State, or any political cor-

poration, after the same was legally forfeited to or purchased by the State or such corporation; and, *provided further*, that nothing in this ordinance shall be taken as granting any time for the payment of the principal of said taxes and licenses; *and provided further*, that interest shall accrue and be collected on the principal of said delinquent taxes and licenses at the rate of eight per cent. per annum from January 1st, 1880; and on all said taxes and license paid a discount of ten per cent. per annum shall be allowed from the date of payment to January 1st, 1881."

It will be observed that the article in the Constitution provided and granted relief to the then delinquent tax payers of the State by not only remitting the interest, penalties, costs, fees and charges on the taxes which were unpaid, but gave the former owners, or any other person interested, the privilege of redeeming from the sales to the State, property which had actually been sold to it, by the payment of simply and only the principal of the taxes, without any interest, penalties, costs, fees or charges, with the provision that the right thus given should continue until the first day of January, 1881. It will also be observed that the article further provided that if the tax payers did not take advantage of the relief granted by the article then that all of the interests, costs, penalties, fees, and charges should revive and attach to the property and that the property should then be *sold in the manner to be provided by law*, and the *title* of the purchaser *should be full and complete*. It should be noted here, that the grant of authority by the people to the Legislature, as thus contained in the organic law, was unrestricted, the provision of the article in the Constitution being simply and only that the property should be "sold in the *manner to be provided by law*, and the title of the purchaser *shall be full and complete*."

The statute under consideration (Act 82 of 1884) was, as herein above stated, passed by virtue of and pursuant

to this special provision of the State Constitution, and the reasons for the passage of the statute are fully explained and set out in the preamble to the statute.

Previous to the passage of Act 82 of 1884, there was practically no law in the State under which the State could properly enforce the payment of the taxes by the sale of the delinquent's property. For this reason a vast amount of taxes remained unpaid when the Constitutional Convention met in 1879, on which the interests, penalties, costs, fees and charges were simply enormous; so much so that in many instances the total amount due by and on the property far exceeded its value. It was for the purpose of relieving the tax payers of this heavy burden and of inducing them, as it were, to reclaim their property and to again place it in commerce, so that it would not only be useful and profitable to the tax payers but would be a source of revenue to the State, that the "ordinance" for their relief was inserted in the Constitution, the idea of the Convention being that the owners of the property would take advantage of the grace granted in the ordinance for their relief, and would pay the face of the taxes without interests, or other charges. But the Convention also realized that some persons would not take advantage of the tendered relief and that it was and would be necessary to *specially provide for the sale* of the property on which taxes were due, and the Convention also realized the necessity for the passage of some law, which, while protecting the rights of the land owners, would, at the same time, be the means of enforcing the rights of the State; hence the provision and special authority for the sale of the property in the *manner to be provided by law*, and that the *title should be full and complete.*

As stated in the preamble to the statute under consideration, previous efforts had been made to carry into effect the provisions of the Constitution herein above referred to,

but without success, and the Legislature foresaw the necessity for the passage of some law that would enable the State, in a measure, to collect its unpaid taxes, and again put into commerce the property on which the taxes were due.

The beneficial effect of this legislation, and of the now settled jurisprudence of the State upholding and enforcing the statute, can not be over estimated; the records of the tax offices and of the Conveyance books will show that large numbers of properties which hitherto were out of commerce, and on which no taxes had been paid for many years are now being transferred in regular course of trade, and the taxes thereon regularly paid into the coffers of the State, all as the result of the sales under the statute, and of the decisions of the State Supreme Court maintaining the validity thereof.

In fact the State Supreme Court has so often and uniformly maintained the validity of the sales under Act 82 of 1884, where the terms of the statute were complied with, that the provisions thereof and the decisions of the Supreme Court interpreting and enforcing the same have now become a "rule of property" in the State, to overthrow which will cause incalculable damage, confusion and wrong to many of the citizens who have parted with their money on the faith of the statute and decisions, which we do not think this Honorable Court will do without grave consideration. It seems to us that the effect and regularity of the statute has been so often maintained by the State Supreme Court that we can safely invoke the now well settled rule and jurisprudence of this Court, that it will follow the decisions of the State Court in interpreting and enforcing the statute of the State.

The first case in which this statute was submitted to the State Supreme Court for interpretation was "In the Matter

of Orloff Lake, Praying for a Writ," decided in February, 1888, reported in 40 La. An., p. 142. In that case all of the questions which are now raised by the plaintiff in error in the instant case were raised by the opponent, who was the former owner of property sold under the tax statute, as is the plaintiff in error here. In fact the allegations made by opponent there, and the proof adduced by him, were much more serious and more strongly against the validity of the sale, and against the constitutionality of the statute than are the "specifications of error" by the plaintiff in error, as will be seen from the following extract from the opinion in Lake case, stating the grounds of opposition made by the opponent there, to-wit:

"That the advertisement of said property for sale, and said adjudication and sale, are illegal and void on the following grounds, viz:

"*a.* Because the property was not assessed for any of said years, 1872 to 1878, in the name of said Mrs. H. P. Harrison, or D. C. Harrison, the owner thereof, during said years; that same was illegally assessed in the name of John Boylan, who was never the legal owner of said property.

"*b.* Because said property was insufficiently and illegally described on the assessment rolls for said years 1872 to 1878, inclusive; that the description of said property on the assessment rolls for said years was not in accordance with law.

"*c.* Because, neither said D. C. Harrison, nor any person interested in said property ever received any *notice of the assessment* of said property for any of said years, or any notice that any taxes were due on same for said years, or any notice that said property would be advertised or sold to enforce the payment of said taxes, nor did any one interested in said property receive any notice of said sale.

"*d.* Because the State taxes on said property for the year 1873 had been paid previous to said advertisement and sale.

"*e.* Because said advertisement was contrary to the provisions of Act 82 of 1884, said property having been ad-

vertised as that of Mrs. H. P. Harrison, or her estate and heirs (as) the present owners.

"*f*. That if Act 82 of 1884, authorized the tax collector to change the assessment of the property, or to advertise the same otherwise than as it was assessed, it was an unconstitutional law.

"*g*. Because said property was never adjudicated to the State, and was not so advertised, and that same was simply advertised for sale to enforce the payment of delinquent taxes, and said advertisement and sale was contrary to the provision of Act 82 of 1884, as it only provided for the sale of property that had been previously adjudicated to the State.

"8. That Act 82 of 1884, is unconstitutional on the following grounds, viz:

"*aa*. Because all the objects of the Act are not expressed in the title.

"*bb*. Because the Act comprises, deals with and legislates on more than one object.

"*cc*. Because it provides for the divestiture of title to property 'without due process of law.'

"*dd*. Because said Act is retrospective in its provisions, and operates as a divestiture of vested rights.

"*ee*. Because said Act provides for notice by public citation only, in violation of Article 210 of the Constitution.

"*ff*. Because said Act does not provide for, nor allow the right of redemption, in violation of said Article 210.

"*gg*. Because said Act confers upon tax collectors judicial powers in violation of Articles 14, 15, 80 and 210 of the Constitution.

"*hh*. Because it is beyond the power of the Legislature to provide that an act (of sale) shall be *conclusive* evidence, as provided in said Act."

The opinion in the Lake case herein above referred to was rendered on the rehearing of that case, the Court having previously decided against the validity of the sale in question. In passing on the constitutionality of the statute, and on the ground that it was beyond the power of the Legislature to provide that an act of sale shall be con-

clusive evidence as provided in the statute, the Court, after copying in its opinion that part of Section 3 of the statute which makes the tax collectors deed conclusive evidence of certain facts and *prima facie* evidence of other facts, uses the following language, viz:

"We are to ascertain what is the true and correct import of the language employed in the legislative enactment, insofar as same bears on this controversy.

"In our (original) opinion on the first hearing of the case, we said: 'That precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds *conclusive* as to non-essential prerequisites, but the exercise of legislative power has never been sanctioned, so as to make such deeds *conclusive* as to *essential prerequisites.*'

* * * * * *

"It would serve no useful purpose to enter into an examination of the prerequisites which are deemed essential and non-essential, as for the purpose of this case it is amply sufficient to say that all the decisions and commentators agree that the *omission to assess at all* the property to which the deed is made, is a radical, or fatal defect which strikes the proceedings with nullity.

"On this hypothesis we expressed the opinion that the opponent had a right to attack the act of sale in question, and to show that the property had *never* been assessed; and, upon an examination of the evidence adduced in support of opponent's assault upon it, we came to the conclusion that lots 5 and 8 had never been assessed at all.

"A re-examination of the record has induced us to modify our opinion in some particulars, but without altering our conclusions with regard to the law.

"Reference to the paragraphs we have quoted from the petition of opponent, will disclose that he does not allege that *no assessment* was made at all, but that he does not allege that: 'The property was not assessed *in the name* of Mrs. H. P. Harrison, etc;' 'That same was *illegally assessed in the name* of John Boylan,' and that it was 'illegally and insufficiently described on the assessment rolls, etc.'

"The opponent does not allege that the property was not subject to taxation, or that *all* the taxes for which the

property was sold had been paid. Of these ingredients the act of sale furnishes *prima facie* evidence, and not being assailed for the want of either, it is full proof of their existence.

"This view necessitates an examination of the statute, the constitutionality of which is drawn in question, and a comparison of it with the several charges preferred against the tax title.

"It was well settled by the decisions of this Court, as well as those of the Courts of our sister States, that the *essential, jurisdictional* prerequisites for the exercise of the taxing power are, viz:

"1st. The *listing* and *assessing* of the property.

"2nd. A *levy* of the tax upon it.

"3rd. The statutory warrant for its sale.

"4th. A sale made under this statutory warrant.

"Do we understand that the statute under consideration makes a tax title conclusive as to either? No. What is meant by the phrase: 'That the property was assessed *according to law?*' 'That the taxes were levied *according to law?*' 'That the property was advertised *according to law?*' 'That the property was adjudicated and sold *as recited in said deed?*'

"Do they not necessarily imply that all those essentials had been fulfilled, and that the tax title is only made conclusive evidence that, if performed, they had been performed 'according to law ?' Does it not follow, as a legal sequence, that, as opponent's complaint is that his property was not assessed *in the name* of the true owner, and was illegally assessed *in the name* of John Boylan, it is excluded by the deed, because it [the deed] furnishes conclusive evidence of the correctness of the assessment, if made at all? It would seem so.

* * * * *

"Opponent's complaint is not well founded, because it is of non-essentials, which are cured by the execution of the tax title.

"With regard to the alleged unconstitutionality of the law, we think opponent is in error. A simple inspection of the title of the act will suffice to show that its object is set forth distinctly, and a perusal of the act will disclose that its *only* object was to enforce the ordinance for the relief of delinquent tax payers.

"We do not regard the provision of the statute, in any sense, retrospective; nor can we perceive in what way they can divest vested rights. The Legislature only intended to provide the manner in which *valid* sales could be effected of property on which delinquent taxes are due the State prior to the year 1879, and whereby such taxes could be collected.

"The ordinance referred to provides that 'all interests, penalties etc., * * on taxes and licenses due the State * * prior to the first day of January, 1879, and yet unpaid, are remitted,' etc.

' * * * * *

"'In the event the principal of said taxes and licenses is not paid by said time, the interest, penalties, etc., * * hereinbefore remitted, shall revive and attach to the property upon which the taxes and licenses are due, and *such property shall then be sold, in the manner to be provided by law, and the title of the purchaser shall be full and complete*,' etc.

"In the effort to enforce this ordinance, the Legislature passed Act 107 of 1880, and, subsequently, Act No. 98 of 1882; but great difficulty was experienced in giving good and sufficient titles to property sold under them, and the State was thereby deprived of this source of revenue to a great extent; hence, the passage of Act 82 of 1884 became a necessity. It deals exclusively with the *proceedings* necessary to effectuate sales of such property as are subject to such delinquent taxes, and the execution and effect of tax titles evidencing such sales. *It is a remedial law authorized by the terms of said ordinance.*

* * * * *

"That such proceedings as those provided by this Act constitute 'due process of law,' in the sense of the Constitution, has been so often decided, that it may be classed as an elementary principle in matters of taxation.

"The provisions of Article 210 of the Constitution of 1879, have *exclusive* reference to the taxes that may be assessed under laws passed in pursuance thereof; and those of the ordinance for the relief of delinquent tax payers, to delinquent taxes that were assessed in years antecedent to its adoption by the people.

"All tax sales made in pursuance of Article 210 are redeemable within one year; but those made in pursuance of said ordinance and law are not redeemable at all.

"We do not think the Act confers judicial powers on tax collectors.

"The objection made to the effect that the Legislature was without power to pass a law declaring that a tax title shall be conclusive evidence, as provided in the Act under discussion, has been virtually disposed of already, as we have ascertained that it has no reference to essential, jurisdictional prerequisites. We think the law is constitutional, and the exception of no cause of action should have been sustained."

The decision in the Lake case was followed by one "In Re. Douglas, Praying for a Writ, etc.," decided in July, 1889, reported in 41 La. An., p, 765, where practically the same grounds of objection as were urged in the Lake case, and as are now urged in the case at bar, were also set up by the opponent.

The opinion in the Douglas case, just referred to, is so applicable to, and so strongly in favor of, the validity of the statute, and of the contention of the defendant in error, that we take the liberty of quoting from that opinion *in extenso*. The Court says:

"The Act 82 of 1884, is a remedial and healing statute, similar to others which have been passed in many States of the Union, the effect of which is to cure defects in prior tax proceedings by making the tax deeds conclusive evidence that the requirements of the law in certain matters had been complied with.

"Such statutes have been frequently subjected to judicial consideration and review.

"The principle is universally acknowledged that where the property is taken in the valid exercise of the taxing power, the owner is not deprived of it 'without due process of law,' within the meaning of the prohibitions on that subject contained in the State and Federal Constitutions. McMillen vs. Anderson, 95 U. S. 40; Davidson vs. New Orleans, 96 U. S. 97.

"There are, however, certain requirements absolutely essential to constitute a valid exercise of the taxing powers, without which no tax sale could be validly made. The chief of these indispensable prerequisites are:

"1. That a tax has been levied.

"2. That the property sold is subject to taxation.

"3. That the property has been assessed.

"4. That the taxes had not been paid.

"5. A statutory warrant for the sale.

"6. A sale made under such warrant.

"Any statute authorizing the sale of a man's property for taxes which had not been levied, or where the property was exempt from taxation, or where the property had not been assessed, or where the taxes had been duly paid, would unquestionably be a taking in excess and outside of the taxing power, and such taking would not be with 'due process of law.'

"So any statute which should attempt to cure such substantial defects, or should attempt to debar the owner from proving, in defense or assertion of his right, that a pretended tax sale was wanting in any of these essential prerequisites, would violate the constitutional prohibition and could not be enforced.

"But outside of these fundamental and quasi-jurisdictional requirements, and with reference to the time and manner in which the tax proceedings shall be conducted, *the legislative discretion is supreme*, and cannot be judicially controlled.

"As the Legislature may, in advance, prescribe and direct the time and manner in which these shall be done, it may likewise provide that failure to comply with such directions shall not defeat the sale, and may constitutionally provide that the tax deed shall be conclusive evidence that such directions were complied with, as to time, manner and every other matter originally within the legislative discretion.

"Broadly stated, the doctrine is, that the Legislature may make the tax deed conclusive evidence of compliance with every requirement which the Legislature might, originally, in the exercise of its discretion, have dispensed with.

"As stated by Judge Cooley: 'The general rule has often been declared that the Legislature may validate, retrospectively, the proceedings which they might have authorized in advance.' Cooley on Taxation, p. 229.

"He states certain exceptions, however, to the general rule which have no application in the instant case.

"This doctrine is supported by a vast mass of authority: Allen vs. Armstrong, 18 Iowa, 510 to 515; Rema vs. Cowan, 31 Iowa, 125 to 128; Bulkly vs. Callahan, 32 Iowa, 461 to 466; Clark vs. Thompson, 37 Iowa, 539; Easton vs. Perry, 37 Iowa, 682 to 683; Phelps vs. Mead, 41 Iowa, 470 to 474; Jackson vs. Morse, 18 Johnson, 441-3; Assurance Company vs. Board, 24 Barbour, 166 to 169, Stewart vs. Schoenfelt, 13 Sergt. and Rawle, 360 to 381; Hubley vs. Keeper, 2 Penn. (Penrose and Watts), 501 to 502; Peters vs. Heasley, 10 Watts, 209; 18 How., U. S. 275, 283 to 285; Thomas vs. Lawson, 21 How. 341 to 342; Callahan vs. Hurley, 93 U. S. 387, *et seq.;* De Treville vs. Smalls, 98 U. S. 517 to 528; Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, 99 U. S. 497; 102 U. S. 586 to 602, Springer vs. U. S.; 17 Wisconsin, 563 to 565, Smith vs. Cleveland; 23 Wisconsin, 617-8, Huey vs. Van Wie.

"The Supreme Court of the United States, in commenting on an Iowa statute, identical with Act 82, said: 'The whole Act exhibits an intention of the Legislature to enforce the payment of taxes, by securing purchasers at tax sales in their purchases, and thus making it dangerous for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of establishing tax titles, and at the same time it works no injustice to owners of land subject to taxation.' Callahan vs. Hurley, 93 U. S. 387.

"In a like case the same Court says: 'The statute 'left to the owner of the lands every substantial right. It was his duty to pay the taxes when it was due. His land was charged with it, and the proceeding ending in the sale was simply a mode of compelling the discharge of his duty. All his substantial rights were assured to him by the permission to show that he owed no tax; that his land was not taxable; that he had paid what was due, or that he had redeemed his land after the sale. He was thus permitted to assert everything of substance; everything except mere irregularities. * * *There is not possible excuse for not enforcing such statutes according to their letter and spirit.*' De Treville vs. Smalls, 98 U. S. 517.

"In a Pennsylvania case, Ch. J. Tilgham, said, in supporting a similar statute: 'One cannot, without pain, see a man divested of his property in a tract of 400 acres for a tax of less than four dollars. But if land holders will pay no attention to taxes, what is to be done? It must be pre-

sumed that every man knows the land he owns, and knows that taxes are imposed on it annually, and sales made of the land, the taxes on which are unpaid. It is within his own knowledge, too, that he has not paid them, and has thus been guilty of a breach of duty.' Stewart vs. Schoenfeldt, 13 Serg. and R. 360.

"Nothing is urged against the sale in this case which was not urged in Lake's case.

"It is not pretended that proceedings were lacking in any of the essential requirements above referred to.

"The only complaint is of certain irregularities in the assessment in non-compliance with the special requirements of the law under which it was made. The fact remains that an assessment was actually made by a description sufficient to identify the property and not to mislead the owner, which is all that is essential. Cooley on Taxation, p. 282.

"If the proceedings had complied strictly and in all respects with the letter of the law, obviously there would be no need of invoking this healing remedial statute. The irregularities are of the very character which the statute was *intended, and was competent to heal.*

"We might have rested our decision upon Lake's case, but we have deemed advisable to express our views more at length, because our attention has been called to a curious misapprehension of the doctrine announced by us, which seems to exist in the minds of our learned brothers of the Court of Appeals, (an inferior appellate Court,) and of certain District Judges. They seem to consider that the doctrine in Lake's case is in conflict with the prior jurisprudence of this Court, and with two of our very recent decisions on the subject sufficiency of the description required to constitute a valid assessment. The cases referred to are Bell vs. Taylor, 37 An. 56, and Kearns vs. Collins, 40 An. 453.

"A reference to those cases will show that the sales therein concerned were *not* made under Act 82 of 1884, and were *not*, in any manner, governed by that statute. The validity of the tax proceedings, therefore, depended on their compliance with the provisions of the particular revenue laws under which they were taken. There had been no healing statute curing deficiencies or making the tax deeds conclusive. Therefore the doctrine of Lake's case

had no application, and the decisions present no sort of inconsistency.

"The suggestion of the decision in Lake's case conflicts with prior jurisprudence is utterly untenable, because there exists *no* prior jurisprudence in this State on the same subject matter. Act 82 of 1884, was the first healing statute of that character passed in this State, and Lake's case was the first decision interpreting and applying such a statute.

"Therefore, the conflict suggested is entirely imaginary. In construing and enforcing the statute we have found no precedents in this State, and have been compelled to seek them in the jurisprudence of other States, and of the Supreme Court of the United States, which amply and firmly supports the doctrine announced by us."

It is well to note here that, as stated in the opinion in the Douglas case, as well as in the opinion in the Lake case, the statute under consideration provides that the tax collector's deed shall be only *prima facie* evidence of the essential prerequisites to the valid exercise of the taxing power, and it fully and amply protects the delinquent tax payer in his rights. That is to say, the statute makes the tax collector's deed only *prima facie* evidence of the regularity of the essential prerequisites, and that it *provides for a notice* to the delinquent tax payer. True, the notice provided for in the statute is by publication, but the jurisprudence of the whole country is so well settled that notice, especially in tax proceedings, can be given by publication, that a reference to any authority on that point would be superfluous, and a reflection on the intelligence of the Court. The statute provides that the advertisement shall contain the name of the party in whose name the property was assessed, or the name of the present owner of same. The record shows that the advertisement in the instant case contains the *full name* of the plaintiff in error, and the notice is to him as the present owner. See tax collector's deed, Tr. 28 to 30, and copy of advertisement, Tr. 39 and 40.

It seems incomprehensible to us that it can be successfully contended, or that the Court will hold, that this was not full and ample notice to the plaintiff in error, who was the delinquent tax payer.

There is no pretence that the statute makes the tax collector's deed conclusive evidence of the regularity of any of the essential prerequisites, or that the plaintiff in error was prevented, either by reason of the provisions of the statute, or otherwise, from proving or showing the non-existence of any of the said essential prerequisites. On the contrary, the truth is, the plaintiff in error, upon the trial in the Court of the first instance, was permitted to offer and did offer evidence on all of the points of which the statute makes the tax collector's deed conclusive evidence. Thus, as will be seen from the note of evidence on behalf of plaintiff in error, (Tr. 14 and 15), he was permitted to offer a copy of the assessment rolls (Tr. 64 and 65 , whereas the statute makes the tax collector's deed conclusive evidence of regularity of the assessment. Again, the plaintiff in error was permitted to offer a copy of the advertisement of sale (Tr. 39), notwithstanding the fact that the statute makes the tax collector's deed conclusive evidence that the property was advertiséd according to law.

However, the advertisement which was offered by the plaintiff in error, shows that all of the provisions of the statute were fully complied with, and that the notice thereon was to the plaintiff in error, by his full and correct name. (Tr. 39 and 40).

The decision in Douglas case was followed two years after, by the case of Surget vs. Newman, 43 La. An. 873, wherein the constitutionality of Act 82 of 1884, was again brought in question, and the Court there reaffirmed its previous decisions maintaining the validity of the statute.

This was repeated in the cases of Henderson vs. Ellerman, 47 La. An. 306; Dibble vs. Leppert, ibid., 792; Michel vs. Stream, 48 La. An. 241; Polland vs. Dreyfous, ibid., 83, and in the instant case, 47 La. An. 1473.

So firmly have the principles in the above mentioned cases become engrafted upon the jurisprudence of this State, and so thoroughly have they becomes "rules of property," that our Supreme Court has decided that a title under Act 82 of 1884 is such as will justify the Court in enforcing the specific performance of an agreement to purchase real estate, notwithstanding the fact that the only title held by the obligee is a tax title under the statute. See Martin vs. Lagenstein, 43 La. An. 789, and W. H. Fitzpatrick vs. H. C. Leak, decided March 1st, 1897, not yet reported.

Even in the instant case, as the record shows, the District Court of the Parish of Orleans compelled, by judgment, two of the defendants in error,(Reese and Fitzpatrick,) to accept the identical title in controversy in this case, from Lang, under an agreement by the former to purchase the property from the latter.

A comparison of the provisions of Act 82 of 1884, of Louisiana, which are complained of as being unconstitutional, with Section 784 of Iowa Revision of Statutes of 1860, will demonstrate that the provisions of the two laws are practically identical; they are "*idem re et sensu*," if not "*idem syllabis seu verbis.*" While the statute of Louisiana has not previously been before this Court for interpretation the law of Iowa has had the sanction of this Court in more than one case.

In discussing the question under consideration, the constitutional grant of authority to the Legislature which has been previously referred to, must be constantly borne in mind, for it is doubted, *if ever before* a Legislature was given such

a *specific* and *full* grant. No such specific authority in a constitution has ever come under our observation, and no such specific constitutional authority is referred to in any of the decisions affirming the constitutionality of laws identical with Act 82. If then, without such a specific grant of authority, courts have affirmed the constitutionality of laws similar to Act 82, *with how much more force do the reasonings of the courts and the principles enunciated in such cases, apply to cases arising under Act* 82, which was passed under the above constitutional grant?

In the case of Callahan vs. Hurley, 93 U. S. 387, this Court maintained the tax sale under the Iowa statute, using the following language, which is particularly applicable to the case at bar, viz:

"Before examining the objections to the validity of the tax deeds which the original bill and its amendments suggest, it will be convenient to notice the provisions of the statutes of the State respecting tax sales and respecting the *effect* of treasurer's deeds for land sold for delinquent taxes. * * "

"We quote a part of Sec. 784 of the Act, as having a *controlling* operation upon the facts of the present case. It is as follows:

"The deed shall be *prima facie* evidence * * of the following facts:

"1. That the property was subject to taxation."

"2. That the taxes were not paid before the sale."

"3. That the property conveyed had not been redeemed 'at the date of the deed.'"

And shall be *conclusive* evidence of the following facts:

"1. That the property had been *listed* and assessed."

"2. That the taxes were levied according to law."

"3. That the property was advertised for sale in the manner and for the length of time required by law."

"4. That the property was sold for taxes as stated in the deed."

"5. That the grantee named therein was the purchaser."

"6. That the sale was conducted in the manner required by law."

"7. That all the pre-requisites of the law were complied with by all the officers, . . . except in regard to the *three* points named in this section where the deed shall be *prima facie* evidence only."

* * * * *

"The whole act exhibits an intention of the legislature to enforce the *payment* of taxes by securing purchasers at tax sales in their purchases, and thus making it *dangerous* for owners of property to neglect payment of taxes due the State. It removes difficulties which had before existed in the way of *establishing* a tax-title, and at the same time it works *no* injustice to owners of land subject to taxation.

* * * * *

"*All* the questions presented in this case, have been *decided* by the Supreme Court of Iowa, and decided *adversely* to the complaint. *Phelps vs. Meade, et al.*, 41 *Iowa*, 470. The case was an attempt to set aside a tax deed of lands sold by the treasurer of Cass County at the sale in January, 1864. The averments of the bill were the *same* as those made in *this* case, and the case was heard upon the evidence taken upon the case now before us. The *rulings* of the Court were, that, if there was a *bona fide* sale *in substance* or *in fact*, the tax deed is *conclusive* evidence that it was made at the proper time and conducted in the proper manner."

It will be noticed that in the case cited, this Court followed the ruling of the State Court, and we respectfully urge that the same course should be pursued in the case at bar, especially as the statutes under consideration are the same; and, in addition to that fact the statute referred to in the instant case was passed under the special constitutional grant which has been hereinabove quoted and discussed.

In another case, Witherspoon vs. Duncan, 4 Wall., 217, this Court uses the following language, viz:

"It is not the province of this Court to interfere with the revenue laws of the State, nor with the interpretation given them by their Courts. Arkansas has the right to determine the *manner of levying* and *collecting* taxes,

and can declare that the particular tract of land shall be chargeable with the taxes, *no matter who is the owner, or in whose name it is assessed and advertised*, and that an *erroneous* assessment does *not* vitiate a sale for taxes. Of course, the property must, under the compact, be *taxable;* but if it is, then the *mode* of enforcing payment of taxes is *wholly* within legislative control."

There is no constitutional provision to the effect that property *shall be assessed* in the name of the *owner.* That is a matter of legislative control. Every revenue law provides for the assessment of property in the name of "unknown owners," and such assessments have always been upheld. This is only one instance to prove that it is *not* an *essential prerequisite* to the making of a legal assessment, that the *name* of the *true owner* must be ascertained as a *condition precedent.*

In the case of O'Grady vs. Barnishel, 23 California, 287, the Court, during the time Justice Field, now of this Court, was Chief Justice, said:

"An assessment of land in the name of 'A. B. and all claimants known and unknown,' is *valid* and effectual, even though 'A. B.' was neither the *owner* of, nor the *possessor* of, the property at the *time* of the *assessment.* A *mistake* in the *name* of the *person* to whom the property *should have been assessed*, does *not* affect the *validity* of the *tax* against the *property.*"

In the case of Thompson vs. Lessee of Carroll, 22 How. U. S. 433, this Court affirmed the principle that property could be legally sold under a subsequent act, though the property was originally assessed defectively, and held "that it is *not* necessary to the validity of an assessment and sale of property taxed, the *name* of the *true owner* be ascertained."

In De Treville vs. Smalls, 98 U. S., 517 to 528, this Court passed upon an Act of Congress in all respects similar to the statute under consideration here, as well as to the statute of Iowa above referred to, and the same ob-

jections as are now raised to the Louisiana statute, and as were raised to the Iowa statute, were there urged against the Act of Congress, and this Court, after a full and thorough consideration of the question, affirmed the validity and the constitutionality of the Act of Congress, and maintained the sale made thereunder. The Act of Congress provided that the commissioner's certificate of sale should be *prima facie* evidence, not merely of regularity of the sale, but also, of its validity and of the title of the purchaser, and it enacted that the deed should only be effected as evidence of the regularity and validity of the sale, by establishing the fact that the property was not subject to taxation, or that the taxes had been paid previous to the sale, or that the property had been redeemed. It will be observed that the provisions of the Act of Congress were, in all respects, as stringent, if not more so than are the provisions of the Louisiana Statute under consideration here. The opinion of the Court in the case cited is so full and the reasoning so conclusive and applicable to the case at bar that we take the liberty of calling the special attention of the Court to it, and of requesting that your Honors give it careful reading, as we feel assured you will. In that case the Court took occasion to refer to a statute of the State of Ohio similar to the Act of Congress and to the Iowa statute hereinabove referred to, and cited with approval and approbation, decisions of the highest Courts of Iowa and Ohio maintaining the validity, and enforcing the provisions, of the statutes of those States.

The opinion and decision in the case of De Treville vs. Smalls, *supra*, were affirmed by this Court in Keeley vs. Sanders, 99 U. S. 441; Sherry vs. McKinley, ibid., 497, and Springer vs. U. S., 102 U. S. 586.

We have quoted copiously from the decisions of this Court, and of the highest Courts of the different States of the Union, and have copied almost the entire opinions of

the Supreme Court of Louisiana in the Lake and Douglas cases, not only to show that the jurisprudence of this Court and of the Courts of the various States are well settled that statutes of the character of the one now under discussion are not unconstitutional, but to show that in maintaining the validity and constitutionality of Act 82 of 1884, the Supreme Court of Louisiana simply and only followed the settled jurisprudence on that point. We have copied the opinions almost bodily, also because the reasoning in those cases is so cogent, clear, concise and succinct, and so unanswerably in favor of the position assumed by the defendants in error, that we deem them much stronger and more conclusive arguments in our favor than we ourselves could make.

As previously stated in this brief, the provisions of Act 82 of 1884, have become settled as a "rule of property" in this State. To such an extent is this the fact that, in its opinion in this case (Tr. 85), the Supreme Court felt called upon to observe:

"The argument now addressed to us against the constitutionality and interpretation of the Act must be viewed as directed against a *series of decisions of this Court.* To those decisions we must adhere and hold the Act precludes the inquiry. In Re Orloff Lake, 40 La. An. 142; In Re Douglas, 41 La. An. 765; Breaux vs. Negrotto, 43 La. An. 430, *et seq.*

* * * * *

"In all aspects of the case we think the defendant's title is protected by a line of decisions that no Court should deem itself at liberty to overthrow, especially as they are based on that provision of our organic law dealing with the subject of taxes left still unpaid after the liberal grace extended to owners by the ordinance."

The counsel for plaintiff in error argue that the statute makes the tax collector's deed conclusive evidence of the title in the grantee, and that it is only necessary, they contend, under the provisions of the statute for one claim-

ing title thereunder to produce the tax collector's deed, and thereby shut out and prevent any inquiry on behalf of the former owner into even the essentials. A mere reading of the statute will show that counsel for plaintiff in error have no foundation for such an assumption, and that the deed fully and amply protects the former owner by guaranteeing to him the right to show the non-existence of any of the essentials necessary for the valid exercise of the taxing power, or for validly selling his property to enforce the payment of his taxes to the State. The various decisions of the State Supreme Court in construing the statute are unanimous on the point that the statute would not preclude or prevent any investigation of, or inquiry into, those points which the settled jurisprudence of the country, and the unanimous opinion of the text writers on the subject, agree are essential in tax sale matters. That the Courts of this State have not considered or construed the tax collector's deed under the statute as conclusive evidence of the title in the grantee, or as precluding any inquiry into the regularity of the essentials, is fully and conclusively shown by the various decisions of the State Supreme Court annulling sales under the statute where the former owner has alleged and shown the absence of any of the essentials. In none of the cases in which sales have been maintained have the Courts of this State held that the statute or the deed thereunder, in any manner, prevented the former owner from showing the non-existence of any of the essentials.

Counsel for plaintiff in error places much reliance in this Court, as they did in the State Court, upon the decision of your Honors in the case of Marx vs. Hanthorn, 148 U. S. 172, but we earnestly and seriously urge that the reading of the opinion in that case will show that it has no bearing on the case at bar. Clearly, the principles recognized in that opinion are not contrary to those con-

tended for by the defendants in error. The Court rested its opinion in that case, it seems to us, on a decision of the State Court, which your Honors followed. Even in the opinion of this Court the principle is recognized that, "It is competent for the Legislature to declare that a tax deed shall be *prima facie* evidence not only of the regularity of the sale, but of all prior proceedings, and of title in the purchaser;" and your Honors also recognized the principle that: "The Legislature might, doubtless, make the deed conclusive of every thing except essentials." We have seen in the preceding pages what the essentials are, and it is unnecessary to repeat them here, but it is proper to remark that there is no attempt or pretence that the provisions of the Louisiana statute make the deed conclusive evidence of the regularity of any of the essentials.

Following the decisions of the Oregon State Court construing the statute under which the sale was made, as is the custom and rule of this Court, your Honors held that the former owner was entitled to notice, either actual or constructive, of the sale, and that the direction of the statute as to the manner of giving the notice must be followed. This Court also found, following the decision of the State Court, "that the name of the owner of the lands to be sold should appear in the notice of the sale." As the name of the owner in that case did *not* appear in the notice, the Court found that the law, as to the notice, had not been complied with and that, therefore, the sale could not be maintained.

The case at bar presents an entirely different state of facts, as well as different provisions of law. As stated before, the special constitutional authority for the statute under consideration was unlimited, the provision being, as before remarked, that the property should be "*sold in the manner to be provided by law.*" We have seen that the manner provided by the statute under consideration, which

was passed pursuant to, and by virtue of this constitutional grant, provided that the notice to the delinquent tax payer should be by publication which, as already shown, is a recognized mode of giving notice in tax proceedings, and that the notice should be "in the name of the party in whose name the property was assessed, or in the name of the present owner of the same." And we have also seen, and the record shows, that the *notice here was to the plaintiff in error by his full and complete name.* (See advertisement, transcript, 39 and 40, and tax collector's deed, transcript, 28 and 29.)

Judge Cooley, in his work on Taxation, p. 266, says briefly and to the point, that:

"*Notice* of proceedings in such cases and an *opportunity* for a *hearing* of some description were matters of constitutional right. It has been customary to provide for them as a part of what is 'due process of law' for these cases." See also, pp. 36, 37, 38; note 1, p. 37; note 1, pp. 38, 39.

There is no doubt but that an act of the Legislature which provides for notice, and by the terms of which the tax payer is given an opportunity to be heard, provides for such a process, in depriving an owner of his property, as comes within the constitutional limit. If, therefore, under Act 82 of 1884, a tax payer is given notice and an opportunity to be heard, such tax payer could require nothing more. Every reasonable protection would then be given him by the law—and that would be DUE PROCESS OF LAW.

From numerous authorities it is clear that any statute on the subject of taxation which accords to the tax payer, before the proceedings which divest him of his property, the protection afforded by a due and proper notice, and an opportunity to be heard, would conform to the principles involved in the constitutional clause ordaining that no man shall be deprived of his property without due process of law.

No matter what may be the *form* of the proceedings adopted by the legislature to enforce the tax, it is only necessary that the statute should conform to the fundamental protective principles alluded to above, and that the officers charged with the duty of executing the statute follow its mandatory provisions.

Act 82, of 1884, provides for the advertisement of property upon which delinquent taxes are due prior to Dec. 31, 1879, and ordains that "such advertisement shall be full, and sufficient notice to all persons interested, and no other notice shall be required." It further provides, "that such advertisement shall contain the name of the party in whose name the property was assessed, or the name of the present owner of the same."

These provisions for notice fulfill one of the constitutional requirements embodied in the phrase "due process of law."

The opportunity for a hearing is given at all times in the courts. Nothing prevents the tax payer or property owner from enjoining the sale of the property advertised by the tax-collector under the authority of Act 82 of 1884. He enjoys that right under other laws. The Supreme Court of the United States decided, in the case of McMillan vs. Anderson, 95 U. S. 41, that such a remedy is authorized under Articles 299 to 309 of our Louisiana Code of Practice. But the right to be heard must be exercised before the proceedings are concluded. The tax payer cannot be permitted to sit idly by and allow his property to be sold without taking advantage of his rights through the courts. A sale under such circumstances would be like a judgment by default, or *pro confesso*. The constitutional requirement of a "hearing" is fulfilled if granted at any time before the sale. The Legislature certainly has the power to make tax proceedings final as to property, by granting no further "hear-

ing" after the sale, when ample "hearing" is granted *before* the sale.

To make the deed of sale conclusive as to the validity of all prior proçeedings, does not exclude all hearing. Its effect is to prevent any further hearing upon a subject of which the tax payer had PREVIOUSLY *every right to be heard.* It is his own negligence if he fails to exercise that right within the prescribed time.

Under Act 82 of 1884, the owner of property has notice and an opportunity to be heard at any time *before the sale*, before his rights or interest are affected; he even has the right, under the terms of the statute, to enjoin the execution of the writ of possession to be obtained by presenting a copy of the tax collector's deed to a Court of competent jurisdiction, and the record (pp. 16 and 17, and pp. 43 and 44,) shows that the defendants in error *have been in possession* of the property in controversy since 1885, hence the act is constitutional. There are no restrictions or limitations placed upon the power of the Legislature to make tax proceedings, as well as judicial proceedings, final and conclusive in certain instances. A tax sale may be made in its nature *res adjudicata* as well as a judgment. Just as a judgment rendered by default, or *pro confesso* on a domiciliary service of citation which may never, in fact, have reached the defendant, may become final and conclusive against him, so, likewise, may tax proceedings after notice by advertisement as in the case at bar.

In the case of Henderson vs. Ellerman, 47 La. An. 307, the contention was made, as it is in the case at bar, that the decision in Marx vs. Hanthorn, *supra*, was in conflict with and contrary to the former decisions of the Louisiana Courts. The Court there went into a long and thorough discussion of the provisions of Act 82 of 1884, and of the various decisions interpreting and maintaining

the same and, in closing its opinion the Court shows the fallacy of the contention, using the following language, to-wit:

"We have been thus careful because of the fact that a somewhat similar question was raised and decided recently by the Supreme Court in Marx vs. Hanthorn, 148 U. S. 172. But a simple inspection of the opinion in that case shows that it is wholly different from the Lake and Douglas cases, in that it treats of an *ordinary* tax statute, enacted by the Legislature of the State of Oregon—one not grounded upon a constitutional provision, as Act 82 of 1884, is. That opinion says: 'It is competent for the Legislature to declare that a tax deed shall be *prima facie* evidence not only of the *regularity of the sale* and of all prior proceedings, and of the title of the purchaser, but that the Legislature cannot deprive one of his property by making his *adversary's claim to it*, whatever that claim may be, *conclusive* of its own validity, and it can not therefore make the tax deed *conclusive evidence of the holders title to the land.*'

"But no such power as that was ever by this Court affirmed to exist in the Legislature, even under the unlimited grant of authority that is contained in the constitutional ordinance.

"On the contrary it was distinctly affirmed 'that precedents are not wanting to show that in several sister States their Legislatures have been recognized as having the power of making such deeds *conclusive* as to *non-essential* prerequisites, but the exercise of legislative power has never been sanctioned so as to make such deeds *conclusive* as to essential prerequisites.' (Italics by the Court.)

"The two decisions are not at all in conflict, and they may stand together. This more fully appears by other decisions of that Court."

The Court then proceeds with a discussion of the opinions of this Court in the cases of Callahan vs. Hurley, De Treville vs. Smalls, Keeley vs. Sanders, and Sherry vs. McKinley, all herein above referred to, and quotes quite freely from them to show that the decision in Marx vs. Hanthorn is not only not in conflict with the decision of the State Supreme Court, but is in harmony with the former decisions of this Court.

Even if your Honors should not agree with the Louisiana Supreme Court and with us, that the opinion in Marx vs. Hanthorn is not contrary to the former decisions of this Court, then, it seems to us, and we earnestly urge, that that decision must fall by the weight of the vast authorities against it as contained in the very numerous decisions of this Court hereinabove referred to, many of which are quoted from by the State Supreme Court in its opinion in Henderson vs. Ellerman case. Especially should this be the case as this Court found that the decision of the Supreme Court of Oregon, interpreting the statute, was a "conclusive construction of the meaning and effect of the State statute in question," whereas the Louisiana Supreme Court has reached a different conclusion as to the statute under consideration in the instant case, and as this Court did not, in its opinion, even refer to any of its former opinions on the same subject matter.

The suggestion in the specification of errors, and the argument in the brief of plaintiff in error that the statute provides for the taking of private property for public use without just compensation are, it appears to us, without merit. A mere reading of the statute demonstrates, and the various decisions of the Supreme Court maintain, that the sole and only purpose and object of the statute is to enforce the payment of delinquent taxes under the provisions and authority of the constitutional grant referred to in this brief. The fallacy of plaintiff's argument is further shown by the fact that the principal only of the taxes for which the property in controversy was sold, to say nothing of the interest, costs and charges, which were very great, exceeded the price paid at the tax sale.

It does not seem to us that the alleged conflict of the statute with the State Constitution is a proper matter for determination by this Court, though counsel for plaintiff

have embodied that question in their specifications of error, and they have quoted extensively from Saunders on Taxation, to sustain their position. While Mr. Saunders is an eminent member of the Louisiana bar, whose ability is well known and fully recognized, we deem it only necessary to call the attention of your Honors, if you take up this question at all, to the many cases in the State Supreme Court where the same question has been repeatedly decided adversely to the contention made by the plaintiff in error, and apparently sustained of the opinion of Mr. Saunders. See, In Re Lake, 40 La. An. 147; In Re Douglas, 41 An. 765; Henderson vs. Ellerman, 47 An. 309; Dibble vs. Leppert, 47 La. An. 796, and the opinion in the instant case. It is proper to remark that Mr. Saunders' book appeared and was published before any of the above decisions, and that our State Supreme Court, notwithstanding that it had the benefit of this publication and of the opinions of Mr. Saunders, decided contrary to his views.

We deem it proper to call the attention of the Court to the fact that even if your Honors conclude that the statute under consideration is unconstitutional, which we do not think you will do, this case can well be decided in favor of the defendants in error upon other points raised in the pleadings, upon which a large amount of testimony has been submitted, but which does not properly come before this Court on the Writ of Error, and that therefore, should your Honors reach a conclusion adverse to the defendants in error on the propositions which are properly before you, it will be necessary to remand the case to the State Court for trial on the other issues. However, we feel confident that your Honors will follow not only the decisions of the Courts of this State on the constitutionality of the statute, but also the decisions of the Courts of every State which have been called upon to construe and pass upon the constitutionality of like statutes,

and the decisions of this Court on the same subject matter, and that, therefore, your Honors will affirm the judgment of the State Court.

Respectfully submitted,

J. ZACH. SPEARING,
Att'y for J. H. Lang, one of the Defendants in Error.

New Orleans, April, 1897.

SYLLABUS.

A statute which provides that a tax collector's deed shall be only *prima facie* evidence of the regularity of *essential prerequisites*, and conclusive evidence of the regularity of *non*-essential prerequisites to the valid exercise of the taxing power is not in conflict with the Constitution, either State or Federal. In Re Orloff Lake, praying, &c., 40 La. An., 142; In Re Douglas, 41 La. An., 765; Surget vs. Newman, 43 La. An., 873; Henderson vs. Ellerman, 47 La. An., 306; Dibble vs. Leppert, ibid., 792; Michel vs. Stream, 48 La. An., 241; Poland vs. Dreyfous, ibid., 83; Castillo vs. McConnico, 47 La. An., 1473; Callahan vs. Hurley, 93 U. S., 387; Witherspoon vs. Duncan, 4 Wall., 217; DeTreville vs. Smalls, 98 U. S., 517; Keely vs. Sanders, 99 U. S., 441; Sherry vs. McKinley, ibid., 497; Springer vs. U. S., 102 U. S., 586.

CASTILLO *v.* McCONNICO.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 48. Argued October 19, 20, 1897. — Decided January 3, 1898.

This action was brought and prosecuted to final judgment in the state courts of Louisiana. Its object was to recover land in New Orleans which had been sold for nonpayment of taxes and had passed from the purchaser at the tax sale by sundry mesne conveyances to the defendant. The grounds on which it was sought to avoid the sale were alleged defects in the statement of the name and of the sex of the owner in the advertisements of sale. The judgment of the trial court was in favor of the defendant, and that judgment was affirmed by the Supreme Court of the State. Touching the objections made to the proceedings the latter court said: "The act of 1884 makes the deed conclusive of the sufficiency of the assessment of the property sold under it. The question of the competency of this legislation in this respect has been before this court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this court. To those decisions we must adhere." It was claimed in argument here that though no Federal question was directly raised in the trial in the state court, one was necessarily involved in the decision. *Held*, that this court had no jurisdiction to review the decision of the Supreme Court of the State.

THE case is stated in the opinion.

Mr. William Winans Wall for plaintiff in error. *Mr. John Watt* was on his brief.

Mr. J. Zach. Spearing for defendant in error. *Mr. Richard Henry Lea* and *Mr. Thomas H. Thorpe* filed a brief for same.

MR. JUSTICE WHITE delivered the opinion of the court.

The plaintiff in error, who was plaintiff in the trial court and appellant in the Supreme Court of Louisiana, prosecutes this writ of error to the judgment of the Supreme Court of Louisiana, affirming a decision of the trial court. The suit was commenced in the Civil District Court of the parish of

Orleans to recover a square of ground situated in the city of New Orleans, the proceeding being known under the Louisiana code as a petitory action. La. C. P., Art. 43 *et seq.* The petition alleged the ownership by the plaintiff of the square of ground, and averred that the defendant McConnico was in possession and claiming title thereto. It alleged that the source from which the defendant asserted his title to have been deraigned was a tax sale made by a state tax collector in November, 1885, to enforce delinquent state taxes for the years 1876, 1877 and 1878, at which sale Orloff Lake was the purchaser. It was averred that Lake sold the property, thus bought by him, in December, 1885, to one Lallance, who, in January, 1891, sold it to Lang; that he in turn sold, in February, 1892, to Fitzpatrick and Reese, each in equal undivided proportions, and that each of them in 1893 and 1894 respectively conveyed their undivided interest to the defendant McConnico. The petition charged that the tax sale, upon which the title of the defendant rested, was absolutely void, because, although the property belonged to the petitioner, whose name was Rafael Maria Del Castillo, the taxes thereon for the years 1876, 1877 and 1878, to enforce the payment of which the tax sale had been made, were assessed in the name of R. Castillo. It was also alleged that the tax sale was void because, in the advertisement which preceded it and which was made by the Louisiana law a prerequisite to a valid sale, the property was described as belonging to Rafael Maria Del Castillo, or her estate and heirs; that, as petitioner was a male person, the adding to the name the words "or her estate and heirs" caused the advertisement to be nothing worth and the sale thereunder to be null. The various acts of sale in the chain of title, from Lake, the purchaser, at the tax sale, to the defendant McConnico, were referred to in the petition, which prayed that not only the tax sale, but all these various transfers between the several parties, be declared to be void and the petitioner be recognized as the owner of the property and entitled to the possession thereof.

McConnico the defendant by answer asserted the validity of his title and called his vendor in warranty, who in turn by

answer became a defendant in the cause, set up the validity of his title and called his vendor in warranty, and so on down to and including Lallance, the transferee from Lake who bought at the tax sale. All the defendants who were called in warranty averred that they were purchasers in good faith for adequate value, one alleging that after contracting to buy the property from his vendor he became doubtful about the validity of the tax sale, and had declined to carry out his contract, and that in a suit brought against him to compel compliance, a final decree had passed between himself and his vendor adjudging the title to be valid and compelling him to become the purchaser under his agreement, the price paid being the full value of the property. Another of the defendants averred that after his purchase of the property, finding that it had been forfeited to the State of Louisiana for taxes due by Castillo subsequent to the years to enforce which the tax sale had been made, he had paid the sum of the taxes, and thus held the property, not only under the tax sale, but under the title which the State of Louisiana had acquired by forfeiting the property, and which enured to his benefit in consequence of his having made the redemption. One of the defendants, McConnico, specifically pleaded by way of exception the conclusive presumptions created by Act No. 82 of 1884, as debarring the court from considering the errors in the assessment and sale which were alleged in the petition. Two of the other defendants, reserving the defences set up in their respective answers, excepted on the ground of no cause of action. The Act No. 82 of 1884, which was necessarily pleaded by McConnico's exception, and the consideration of which was also presented by the exceptions of no cause of action filed by the two other defendants, was substantially as follows: It made it the duty of the tax collectors to advertise for sale at public auction "all property on which there remained unpaid taxes due to the State prior to December 31, 1879." It provided for thirty days' advertisement, and directed the tax collectors, where property was bought at a tax sale, to make a deed thereof to the purchaser, and the deed thus to be made, the statute said, "shall be *prima facie* evi-

dence of the following facts: 1st. That the property conveyed was subject to taxation; 2d. That none of the taxes for which said property was offered were paid, *and said deed shall be conclusive evidence* of the following facts: 1st. That the property was assessed according to law; 2d. That the taxes were levied according to law; 3d. That the property was advertised according to law; 4th. That the property was adjudicated and sold as stated in said deed; and, 5th. That all the prerequisites of the law were complied with by all the officers from the assessment up to and including the execution and registry of the deed to said purchaser; and duly certified copies of said deeds shall be full proof without further evidence of all contained therein." Louisiana Acts of 1884, p. 104.

The trial court heard the exceptions separately from the merits and overruled them. The case was subsequently tried and judgment was rendered in favor of the defendants rejecting the demand of the plaintiff. This judgment was, on appeal, affirmed by the Supreme Court of the State of Louisiana. *Castillo* v. *McConnico*, 47 La. Ann. 1473, 1475. The court in its opinion, which is a part of the record in this cause, *Egan* v. *Hart*, 165 U. S. 188, 189, after deciding that the tax sale in question was authorized by the state statute, said:

"It is argued on behalf of the plaintiff that the property was not properly assessed for taxes prior to 1879, because the assessment was in the name of R. Castillo instead of Rafael Maria Del Castillo. We are relieved of the necessity of passing on the question of the sufficiency of this assessment. The act of 1884 makes the deed conclusive of the sufficiency of the assessment of the property sold under it. The question of the competency of this legislation in this respect has been before this court on repeated occasions. The argument now addressed to us against the constitutionality and interpretation of the act must be viewed as directed against a series of decisions of this court. To those decisions we must adhere and hold the act precludes the inquiry. *In the matter of Orloff Lake*, 40 La. Ann. 142; *In re Douglas*, 41 La. Ann. 765; *Breaux* v. *Negrotto, Jr.*, 43 La. Ann. 426 *et seq.*"

Referring to the thirty days' advertisement which preceded the tax sale, the court said: "In this case the advertisement gave the full name of plaintiff, adding her estate or heirs. In our view the advertisement conformed to the requirement of the act."

The defendant in error asserts that we have no jurisdiction to review the decision of the state court because no Federal question appears by the record to have been raised either in the trial court or in the Supreme Court of Louisiana, and because no question of that nature was decided in either of these courts, or if a Federal controversy was passed upon by the Supreme Court of the State, the decree of that court is sufficiently sustained, apart from any Federal question which may have been referred to in the opinion. To the contrary, the plaintiff in error contends that a Federal question was necessarily involved in and was passed on by the decision below, and that the issue so determined was there duly presented for consideration. The first of these propositions is thus evolved. The defects asserted to exist in the tax assessment and sale were, it is claimed, so radical in their nature that they would, if they had been considered, have caused the assessment and sale to amount to a denial of due process of law under the Fourteenth Amendment to the Constitution of the United States. From this premise is deduced the conclusion that the action of the state Supreme Court in refusing to consider the proof as to the existence of the defects was equivalent to taking property without due process of law. In other words, the argument is that the decision below, in effect, held that by virtue of the presumption engendered by the Louisiana act of 1884, and arising from the tax collector's deed, the plaintiff was estopped from claiming his property, even although there had been no assessment and no sale at all. Whilst it is conceded that the Federal question which is thus asserted to be necessarily involved in and embraced by the decision of the Supreme Court of Louisiana, does not appear to have been raised on the record either in the trial court or the Supreme Court, this fact is claimed to be immaterial. The system of practice prevailing in Louisiana, it is

argued, rendered it impossible to place the Federal question on the record in the strict sense of the word, and caused it to be possible only to present such issue by means of the brief of counsel filed in the Supreme Court of the State before the hearing. This brief, duly certified by the clerk of the Supreme Court of the State of Louisiana, has been presented, and it is argued that, in view of the system of practice obtaining in the State of Louisiana, this court may look to the brief as a legitimate source of information, and *Stewart* v. *Kahn*, 11 Wall. 493, is relied on as supporting this proposition.

To decide the issue as to jurisdiction, we will at the outset ascertain whether a Federal question was necessarily involved in the decision of the state Supreme Court. Even though it be that a Federal controversy was decided, nevertheless if the questions of a purely state character, upon which the Supreme Court of Louisiana passed, are completely adequate to sustain the decree by that court rendered, wholly independent of the Federal question, it will result that no Federal issue is presented for review. *Egan* v. *Hart*, 165 U. S. 188, 191; *Powell* v. *Brunswick County*, 150 U. S. 433, 441, and authorities referred to in both of the foregoing cases. And if this conclusion be reached it will be unnecessary to consider whether, under the practice which prevails in Louisiana, the Federal question could have been presented in any other mode than by brief of counsel, and whether this fact would authorize this court to go beyond the technical record and look to such brief to aid in determining whether the Federal issue was duly set up and claimed.

Because the court below applied the statutory presumption of correctness arising from the tax collector's deed, and refused to consider the alleged defects in the assessment and sale, it does not follow that, if the presumption had not been applied and the alleged imperfections in the assessment had been given their full weight, want of due process of law would have resulted from maintaining the sufficiency of the assessment and from upholding the validity of the tax sale. It follows that, in order to ascertain whether a Federal question was necessarily involved in the decision of the lower court, we are com-

pelled to determine whether the vices asserted to exist in the assessment and sale were of such a nature as to cause the enforcement of the assessment and sale to deprive the plaintiff in error of his property without due process of law. The contention advanced in argument on this subject is much broader than the case justifies; thus it is said, the state statute directs that from a tax collector's deed a conclusive presumption of a previous assessment shall be deduced, hence the statute in terms is repugnant to the Fourteenth Amendment since it takes property under a tax sale, although no assessment whatever had ever been levied on the property so taken. But, as thus stated, the proposition presents a purely moot question. The plaintiff in error has no interest to assert that the statute is unconstitutional because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether in the case which he presents the effect of applying the statute is to deprive him of his property without due process of law.

We come, then, to consider whether the alleged defects in the assessment and in the advertisement were of such a nature as to cause the enforcement of the one and the upholding of the other to so operate as to deprive the plaintiff of his property without due process of law. The error in the advertisement was that, although the publication gave the full name Rafael Maria Del Castillo, it was accompanied with the addition "or her estate and heirs," and the alleged defect in the assessment was that the property was assessed in the name of R. Castillo, when the real name of the owner was Rafael Maria Del Castillo. The decision of the state court that the advertisement was sufficient under the Louisiana statute involved purely a state question, which we accept and follow. Conceding that a sale to enforce taxes made without notice, actual or constructive, would be a want of due process of law, it is yet obvious that the publication for thirty days required by the state law was sufficient notice to constitute due process of law, and that the mere fact that there was affixed to the name inserted in the advertisement the words "or her estate and heirs" did not destroy the efficacy of the advertisement, and

did not cause it to be, in legal contemplation, no notice whatever. The contrary proposition could only be supported upon the theory that, although a complete description of the property and the full name of the owner were inserted in the advertisement, the mere addition of the words referred to were so calculated to deceive and mislead as to render the notice legally inoperative. But such assumption would be to the last degree technical and unreasonable, and cannot be indulged in.

We dismiss, then, from view the alleged defects in the advertisement, and will consider the assessment. In doing so we will take notice of, and give full effect to, the fact that the name placed on the assessment roll was R. Castillo instead of Rafael Maria Del Castillo, which was the full name of the owner of the property assessed. Although the law of Louisiana under which the assessments in question were made provided for the placing of the name of the owner on the assessment roll where such name was known, it also directed that the property assessed should be described in the assessment roll. The statutes, moreover, expressly fixed a time when the assessment rolls should be exposed for examination and correction, and furnished ample opportunity, not only for revision as to valuation, but also for judicial correction of any legal error which might be asserted to exist in the assessment. The notice required by the statute to be given of the opening of the assessment rolls for inspection and revision was not addressed to each particular person assessed, but was afforded by a general publication, calling upon all persons having property subject to taxation to come forward and ask for such correction as they desired to have made. Louisiana Acts, Extra Session of 1877, pp. 154, 155; Louisiana Acts of 1871, p. 118. Beyond peradventure, this statute afforded both constructive and actual notice of the making of the assessment, and ample opportunity to any property owner to correct or resist the same if he deemed himself injured thereby. It cannot be doubted that in the exercise of its taxing power the State of Louisiana could have directed that the property subject to its taxing authority should be assessed without any

reference whatever to the name of the owner, that is to say, by any such description and method as would have been legally adequate to convey either actual or constructive notice to the owner. As said in *Witherspoon* v. *Duncan*, 4 Wall. 210, 217, "It is not the province of this court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with the taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes."

The claim, then, is that the assessment in question did not constitute due process of law within the Fourteenth Amendment because of error in the name of the owner, although the assessment would have been due process if under the state law it had not been required to mention the name of the owner, that is to say, that the assessment is repugnant to the Constitution of the United States, because of the lesser when it would not have been in conflict with the Constitution for the greater omission. This deduction demonstrates the error of the proposition relied on, and it cannot be escaped by saying that although the State had the power, without violating due process of law, to dispense with the name, nevertheless where the state statute has directed the use of a name in making an assessment, a defective giving thereof renders the assessment wholly void and a want of due process of law. This argument is answered by *Williams* v. *Supervisors of Albany*, 122 U. S. 154, 164, where, in considering the power of a State as to the assessment and collection of taxes, speaking through Mr. Justice Field, it was said:

"The mode in which the property shall be appraised by whom its appraisement shall be made, the time within which it shall be done, what certificate of their action shall be furnished, and when parties shall be heard for the correction of errors, are matters resting in its discretion. Where irections upon the subject might originally have been dispensed with, or executed at another time, irregularities arising from

neglect to follow them may be remedied by the legislature, unless its action in this respect is restrained by constitutional provisions prohibiting retrospective legislation. It is only necessary, therefore, in any case to consider whether the assessment could have been ordered originally without requiring the proceedings, the omission or defective performance of which is complained of, or without requiring them within the time designated. If they were not essential to any valid assessment, and therefore might have been omitted or performed at another time, their omission or defective performance may be cured by the same authority which directed them, provided, always, that intervening rights are not impaired."

The vice which underlies the entire argument of the plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the Fourteenth Amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law. The two are neither correlative or coterminous. The first, due process of law, must be found in the state statute, and cannot be departed from without violating the Constitution of the United States. The other depends on the lawmaking power of the State, and as it is solely the result of such authority may vary or change as the legislative will of the State sees fit to ordain. It follows that, to determine the existence of the one, due process of law, is the final province of this court, whilst the ascertainment of the other, that is, what is merely essential under the state statute, is a state question within the final jurisdiction of courts of last resort of the several States. When, then, a state court decides that a particular formality was or was not essential under the state statute, such decision presents no Federal question, providing always the statute as thus construed does not violate the Constitution of the United States, by depriving of property without due process of law. This paramount requirement being fulfilled, as to other matters the state interpretation of its own law is controlling and decisive. This distinction is pointed out by the decisions of this court. *Pittsburg, Cincinnati &c. Railway* v. *Backus*,

154 U. S. 421; *Kentucky Railroad Tax cases*, 115 U. S. 321; *Davidson* v. *New Orleans*, 96 U. S. 97.

Bearing the foregoing elementary principle in mind, we will briefly notice the adjudicated cases upon which the plaintiff in error relies.

The authorities referred to tending to establish that where the law requires an assessment to contain the name, the omission of the name renders the assessment void, are inapposite to the question under consideration. We are not here concerned with the meaning of the Louisiana statutes, or whether we would hold as an original proposition, were we construing them, that a defect in the name of the person assessed would not be a material variance. The Supreme Court of the State of Louisiana has construed the statutes of that State otherwise. The issue which we are to determine is not what interpretation should be given to the statutes of the State of Louisiana, but whether, accepting the meaning affixed to the statutes of that State by the court of last resort of the State, their provisions as so interpreted are repugnant to the Constitution of the United States, because not affording due process of law. The previous adjudications of the Supreme Court of Louisiana referred to by that court in its opinion and upon which it rested its decree in this case, in effect hold that under the Louisiana law a mistake in the name did not render the assessment void, and therefore that the conclusive presumption engendered by the Louisiana act of 1884 was not intended to, and did not make valid a wholly void assessment. Because in a case decided subsequently to the one now under review the Supreme Court of the State of Louisiana has held that an assessment in the name of a person deceased rendered such assessment wholly void, it does not follow that the court thereby departed from the ruling which it had made in this case, and which had been by it rested upon a line of decisions declared by it to have conclusively settled the law of Louisiana on the subject, and which, in effect, it announced had become a rule of property in that State. The case of *Marx* v. *Hanthorn*, 148 U. S. 172, in no way conflicts with the foregoing considerations. That case came to

Syllabus.

this court on appeal from a Circuit Court of the United States, and its decision involved ascertaining the meaning of the tax laws of the State as interpreted by the court of last resort thereof. In performing this duty the court adopted and followed the construction given to the tax laws of the State by the Supreme Court of the State whence the case came.

There is a claim asserted in argument that as a particular section of the act of 1884 provided that the sum of the bid at a tax sale should be paid into the state treasury, therefore it is clearly unconstitutional, since, in a case where the bid exceeded the taxes, the surplus money of the owner would go into the state treasury without provision for its repayment. But this is a mere abstract contention, since the fact is that the sum bid at the tax sale in question was less than the amount of the taxes assessed against the property.

Dismissed for want of jurisdiction.